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CURRENT TOPICS

Theirs To Reason Why

AN important point of principle was stressed by LORD MERRIMAN, P., in *Johnson* v. *Johnson*, p. 64, *post*. In that case a husband appealed against an order, made by the Dynas Powis justices sitting at Barry, in favour of his wife on the ground of desertion. At the hearing it was revealed that the justices' reasons for their decision had, at the request of the clerk to the court, been drawn up by counsel for the wife and approved by the justices, the source of the draft reasons being unknown to them. The President firmly repudiated the making of such a request. "We insist, and the rules insist," he said, "that we should be provided with a note of the evidence and with the reasons of the justices for their decision. . . . This practice must stop and if it goes further, in the sense that solicitors are asked to do the same thing if there is no counsel appearing in the case, the same remarks apply." In this instance the order was set aside and a rehearing by a fresh panel of justices was required, the clerk concerned being prohibited from sitting on the new trial.

Charity Proceedings

THE Rules of the Supreme Court (No. 5) 1960 (S.I. 1960 No. 2328), briefly mentioned in our issue of 30th December, 1960 (104 SOL. J. 1082) provide among other matters a completely new order (Ord. 54 Q) laying down a procedure for applications to the court in two cases where such applications may now be made under the Charities Act, 1960. Under s. 18 (1) the Charity Commissioners (which means, for the purposes of this note, in the case of any educational trust the Minister of Education) have jurisdiction to make schemes, to appoint, discharge or remove trustees, and to vest property. Under s. 18 (11) an appeal against any order of the commissioners under this section lies to the High Court, subject to a proviso that no such appeal may be brought except with a certificate of the commissioners or with the leave of one of the judges attached to the Chancery Division. Under s. 28 charity proceedings (as therein defined) may be taken by the charity or the persons there specified. In general the taking of such proceedings must be authorised by order of the commissioners, but such proceedings may nevertheless be entertained if after such an order has been applied for and refused, leave to take the proceedings is obtained from one of the judges attached to the Chancery Division. The new Ord. 54 Q provides, first, that an application shall not be made under the proviso to s. 18 (11) for leave to appeal against an order of the commissioners unless the applicant has requested the commissioners to grant a certificate and

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they have refused to do so. The Order provides, secondly, for a simple and inexpensive procedure for applications to the court under ss. 18 and 28. They will be made ex parte in the first instance, and may be determined on the documents without a hearing or referred to chambers for hearing. It is unnecessary to refer to the details of this procedure, which are fully set out in the Order, in this note, except in regard to one point: any such application must be made within twenty-one days after the refusal of a certificate (s. 18 (11)), or of an order authorising the taking of proceedings (s. 28).

Tax-loss Farming

SINCE the passing of s. 20 of the Finance Act, 1960, it is usually assumed that to carry on a farm at a loss is now a dead loss. In one context, however, a proved loss may still be turned to advantage. This is in respect of the application of the earnings rule to a claimant for a retirement pension. In the case of R(P) 2/60, decided by the Commissioner of National Insurance, the claimant became entitled to a retirement pension from 7th July, 1958, subject to reduction on account of earnings except in respect of the first week. The claimant was a director of a company from which he derived substantial director's fees, but he also carried on a farm from which he made a loss during the tax year 1957–58. The question at issue was whether this loss could be set off against his director's fees for the purpose of ascertaining his earnings within the meaning of the National Insurance Acts. The loss was such that if so set off his earnings would be reduced sufficiently to enable him to receive payment of his pension at the full rate. After hearing much argument on the point the Commissioner decided that the claimant's pension did not fall to be reduced; the effect of the National Insurance (General Benefit) Regulations, 1948, as amended, was that a loss from one occupation must be set off against the profit from another.

Assaults on Constables

As a general rule, constables have no right to enter or remain on private premises, except on the invitation or with the permission, express or implied, of the lawful occupier of those premises. This was made clear in *Great Central Railway Co.* v. *Bates* [1921] 3 K.B. 578, where Atkin, L.J., said that "it appears to me quite impossible to suggest, merely because a constable may suspect there is something wrong, that he has a right to enter a dwelling-house." It is also clear that if a constable is asked by the occupier to leave premises, he is not entitled to remain merely for the purpose of making inquiries which cannot result in an arrest. Thus in *Davis* v. *Lisle* [1936] 2 K.B. 435, two constables entered some premises to make some inquiries and it was held that from the moment that they were told to leave, and they remained where they were, they were trespassers. Of course, in such a case, the occupier may expel the trespasser or trespassers, using no more force than is reasonable (cf. *Collins* v. *Renison* (1754), Sayer 138). It seems that these principles were applied in a recent case in Bristol Magistrates' Court. Some police officers went to the defendant's house to make inquiries about a road accident in which the defendant's car was said to have been involved. The defendant requested them to leave but they did not do so and the defendant was charged with assaulting one of them. The charge was dismissed and the defendant was awarded costs of 20 guineas against the police because, at the time of the alleged assault, the police officers were trespassers. While it is normally a criminal offence to assault a constable acting in the execution of his duty (s. 38 of the Offences against the Person Act, 1861), it seems that the constable may bring a civil action for damages against his assailant. At least, in a recent case in the Southampton County Court a man who had served six months' imprisonment for unlawfully wounding a police constable was ordered to pay him damages of £135 in respect of the injuries which he inflicted. His Honour Judge HARINGTON told the man that if he unlawfully injured another "then you have to pay for it," and it mattered not whether that other was a police constable or anybody else.

Circumstantial Evidence

IN *R.* v. *Onufrejczyk* [1955] 1 Q.B. 388, the Court of Criminal Appeal held that on a charge of murder the fact of death is provable by circumstantial evidence, notwithstanding that neither the body nor any trace of the body has been found and that the prisoner has made no confession of any participation in the crime. This decision was applied in an unusual but important case in the Supreme Court of India. In that case, *Anant Chintaman Lagu* v. *The State of Bombay* [1960(2)] S.C.R. 460, a person had been convicted by the Bombay High Court of murdering a woman in the course of a railway journey from Poona to Bombay and the Supreme Court dismissed his appeal because the fact of death by poisoning was provable by circumstantial evidence, notwithstanding that the autopsy as well as the chemical analysis had failed to disclose any poison. Their lordships took the view that the circumstances of the case and medical evidence of experts were sufficient to enable them to infer that the death must have resulted from the administration to the victim of some unrecognised poison, or drug which acted as a poison. In the words of LORD GODDARD, C.J., in *R.* v. *Onufrejczyk*, *supra*, there was circumstantial evidence "rendering the crime certain."

Miss Eulalie Evan Spicer

WE were delighted to find Miss SPICER'S name in the New Year Honours List. For many years she was the chief motive force behind The Law Society's Divorce Department and afterwards her abilities and energies were transferred to launching the Legal Aid Scheme. Only a short time after the launching Miss Spicer proceeded to board the vessel and for several years past she has been the Secretary of the London Legal Aid Committee. We congratulate her warmly on her O.B.E.

The Late Mr. John Stallard

BRITAIN'S oldest solicitor, Mr. JOHN STALLARD, died at his home at Colwall, Worcestershire, on 12th January. He was 103. Mr. Stallard, who was three times Mayor of Worcester, in 1907, 1919 and 1934, practised regularly from his Worcester office until his 100th birthday. He was 101 before he finally retired. He was the oldest member of The Law Society and for nearly seventy years played a conspicuous part in the public and business life of Worcester. A staunch churchman, he was a generous benefactor to many church movements in the Worcester diocese. He was admitted in 1879 and in the following year was taken into partnership by his father, Mr. John Stallard, with whom he had served his articles.

CAPITAL AND INCOME: APPORTIONMENTS AS TO TIME—I

THE man on the Clapham omnibus, objectively studying the printed will form which he has thoughtfully provided to alleviate the tedium of his journey, can always be relied on to give a lucid explanation of the differences between his capital and income. Indeed a significant gesture out of the window at his fellow citizens sitting motionless behind the steering wheels of their capital investments may suggest that he entertains reasonable doubts as to the necessity for the question. His executor will know better. If ever two words in the legal vocabulary bore the stamp of nightmare, they are "capital" and "income."

Whenever a testator leaves his property to his wife for life with remainder to their children there is a good chance that the misguided philanthropist who administers his affairs will be faced with some ticklish problems. What should be done with a payment received after his death, which includes income current at the date of his death? Does it form part of the corpus of the trust fund so that it should be invested and only the income arising from it be paid to the widow? Is it income which belongs to her as tenant for life; or must it be divided between the two? The questions are simple; the answers often lie veiled behind an opaque if not impenetrable curtain of conflicting dicta. It is only in exceptional cases that the amount involved will be substantial; usually the executor does not feel justified in incurring the expense of an application to the court.

Before 1952 a favourite way of avoiding the dilemma was to insert in the will a clause authorising the trustees to determine whether any moneys were to be considered as capital or income and making their decision binding on all interested under the will. Danckwerts, J., had to consider such a clause in *Re Wynn* [1952] 1 Ch. 271. While admitting that it was convenient to have matters regarding the apportionment of capital referred for some informal decision so that the expense of court proceedings might be saved, he held that such clauses could not prevent the beneficiaries seeking a decision from the court; and he expressed the view (at p. 279) that as clauses of this type tended to mislead beneficiaries and trustees as to their rights it would be far better if they were omitted from wills.

The executor is therefore back on square one. This article is an attempt to collect together the authorities to assist the executor in making up his own mind as to which payments go to capital, which to income and when an apportionment is necessary. While the problems most frequently arise on the death of the testator they may also be raised on the death of a tenant for life. Similar difficulties will also occur when the testator makes a specific bequest to Abel and leaves the remainder to Cain. Except where expressly stated only the first case will be discussed here; a gift of residue to Fenella for life with remainder to Margo. The same considerations, however, apply to each of the three cases. Space does not allow a consideration of the related topic of equitable apportionments which are necessary when the administration of an estate has given an unfair advantage to the life tenant at the expense of the remaindermen, or vice versa. But the decision of Cross, J., in *Re Morris's Will Trusts* [1960] 1 W.L.R. 1210, illustrates that the subject is still a good talking point on those buses to Clapham.

One final preliminary caveat. What is capital, what is income and when is there an apportionment, are all questions which the testator may himself have considered and dealt with; any clear directions in the will will oust the ordinary rules. It is assumed for the first two parts of this article that the will is silent. In the last part the effect of some of the declarations made by the less eccentric testators is considered.

Capital or income?

When the executor receives a payment the first thing to decide is whether it is of the nature of capital or of income. If it is capital the trouble is over before it has really started and the executor can thankfully add the payment to the corpus of the trust fund. It is only if the payment is of the nature of income that the difficulties arise and a decision between capital, income and apportionment has to be made.

Whether a payment is of an income nature or a capital nature is usually a matter of common sense. Often it will be received from a company, in which case the principles on which to act have been established for a long time. The nature of the payment in the executor's hands is governed by the intention of the company (*Bouch* v. *Sproule* (1887), 12 App. Cas. 385); thus dividends are income, bonus shares capital. If, however, a company sells a capital asset and distributes the profit among its shareholders this is income, for a company cannot reduce its capital by distributing it to its shareholders unless authorised to do so by the court or in a winding up (see Companies Act, 1948, s. 66, and *Hill* v. *Permanent Trustee Company of New South Wales* [1930] A.C. 720). The same principles have been applied to that modern phenomenon, the unit trust. It was decided in *Re Whitehead* [1959] 1 Ch. 579, that the executor must look at the individual company's intention in making the payment and was not bound by the provisions of the unit trust deed.

National savings certificates were considered in *Re Holder* [1953] 1 Ch. 468. The certificates belonged to the seventh issue; after examining the prospectus, Roxburgh, J., decided that as the result of an implied agreement between the holder and the Government the interest on the certificates was added to the capital sum invested at the end of each month.

Two further recent decisions will perhaps have less widespread results. In *Re Hasluck* [1957] 1 W.L.R. 1135, Wynn Parry, J., decided that any increase in the value of land under s. 17 of the Town and Country Planning Act, 1954, is capital; while in *Re Pomfret* [1952] 1 Ch. 48, compensation paid under s. 2 (1) (*b*) of the Compensation (Defence) Act, 1939, in respect of damage done to settled property during occupation by military authorities was held to be a casual profit retainable by the tenant for life.

Payment due in the testator's lifetime

Having separated the sheep from the goats, to whom do the goats belong? If the moneys have been paid or should have been paid during the testator's lifetime they are capital, because they either are or are deemed to be his capital assets at the date of death, and this is so even if they are paid in respect of a period which extends after his death. The classic example of this is rent payable in advance. Thus a payment of rent which is received by the testator on Christmas Day for the quarter commencing on 25th December will be treated as capital, and even if the testator dies of a surfeit of lampreys on Boxing Day the tenant for life will not be entitled to a penny of the rent (*Ellis* v. *Rowbotham* [1900] 1 Q.B. 740).

Trevalion v. *Anderton* (1897), 66 L.J.Q.B. 489, is another illustration of this rule. Under a separation deed a husband

covenanted to pay his wife an annuity of £150 per annum during their joint lives by equal half-yearly payments in advance on 1st March and 1st September in every year. The husband carried out his bargain, paying the last instalment of £75 on 2nd March, 1896, a few days before he died. The husband's executor sued the widow for the return of £70 4s. 9d., being the apportioned part of the money in respect of the period after the husband's death. He was unsuccessful.

The common-law rule

So much for the position if the money is or should have been paid during the lifetime of the testator. What happens to payments to which the testator had no right at the date of his death?

The old common-law rule was robust and easy to work though perhaps it did less than justice to the claims of the contestants. If the payment was made after the death of the testator the tenant for life took the lot; if not, it was capital. The date of payment was the decisive factor and there was with one exception no apportionment. The exception was interest on money lent, for in the absence of a contrary intention this was deemed to accrue from day to day and was apportionable even though expressed to be paid at intervals (see *In re Lewis* [1907] 2 Ch. 296, per Warrington, J., at p. 299; *Re Rogers* (1860), 1 Dr. & Sm. 338, a case of interest on railway debentures; *Ibbotson* v. *Elam* (1865), L.R. 1 Eq. 188, a case of interest on a share of capital in a partnership).

(To be continued) J. R. M.

CLERK RETIRING WITH THE JUSTICES

THIS question has again been before the Divisional Court in *R.* v. *Consett Justices; ex parte Consett Iron Co.* (1960), *The Times*, 13th May, and the opportunity will be taken in this article to review the circumstances under which a decision of magistrates may be challenged. This article will be confined to consideration of that issue from the practitioner's point of view, as it is unnecessary to state again for the benefit of clerks how they should conduct themselves when the magistrates are deliberating; rules for their guidance were clearly laid down in Practice Directions at [1953] 1 W.L.R. 1416; 97 SOL. J. 816, and [1954] 1 W.L.R. 213; 98 SOL. J. 64.

The cases

Prior to May, 1952, it seems to have been fairly common for magistrates' clerks to join in discussions among their magistrates when the latter were considering their decisions and sentences without retiring, and to retire with them, if they decided to consider such matters privately, whether there were questions of law and procedure or not. In that month, however, the High Court decided the case of *R.* v. *East Kerrier Justices; ex parte Mundy* [1952] 2 Q.B. 719; the facts were that, at the conclusion of the evidence given for both sides in a careless driving case, the magistrates retired with their clerk to consider their decision. The clerk returned into court without them, obtained a piece of paper from a policeman and took it back into the magistrates' retiring room. On this paper were details of a previous conviction of the defendant. Then the magistrates came back into court, announced their decision to convict, and asked if there was any previous conviction. After being told of the one there was—not challenged by the defendant—they announced the sentence. The defendant was granted certiorari to quash the conviction, with some hesitation on the part of all three members of the Divisional Court, on the ground that justice had not manifestly appeared to be done because no indication had been given to the defendant as to what was on the piece of paper and, further, evidence of his record had been received in private; he might have thought, it was suggested, that it was additional police evidence. Lord Goddard, C.J., then made the first of several pronouncements about the duties of the magistrates' clerk as to advising, and retiring with, his bench; the fact that there might have been no point of law involved was not made the ground for granting certiorari in that case. He added that, if the magistrates had stated in open court that the paper mentioned a previous conviction but that they had already decided to convict before hearing of it, the conviction would not necessarily have been quashed on the analogy of *Davies* v. *Griffiths* [1937] 2 All E.R. 671 (request for previous convictions without announcing decision to convict not fatal if magistrates have decided to convict before making the request). It has been held that even if there is an improper reference in open court to a previous conviction it will not generally be a ground for quashing a conviction if the magistrates put it out of their minds and announce that they have disregarded it (*Cholerton* v. *Copping* (1906), 70 J.P. 484; *Barker* v. *Arnold* [1911] 2 K.B. 120). If they feel, when the defendant's record has been inadvertently mentioned, that it cannot be disregarded by them in coming to their decision, they should adjourn the case to another bench (*Elkington* v. *Kesley* [1948] 2 K.B. 256).

The *Welshpool Justices* case

In 1953 came the case of *R.* v. *Welshpool Justices; ex parte Holley* [1953] 2 Q.B. 403; there the magistrates' clerk had retired with them and given his advice on matters of law but had remained in the retiring room while questions of fact were being discussed. The shorthand-writer, a young lady referred to—no doubt to her surprise—as "his amanuensis," was then called into the room and read aloud some of the evidence. The Divisional Court refused to grant certiorari to quash the conviction, it being said that the magistrates had done nothing wrong in asking their clerk to come with them as they required his advice on law and it was not enough to invalidate their decision that he stayed in the retiring-room whilst the facts were being discussed. Lord Goddard added that it was putting too high a burden on the magistrates to expect them to tell their clerk at a particular moment: "Now you must leave." He also said that it would be better if the relevant parts of the shorthand note had been read aloud in court in the presence of the parties so that any mistake could be corrected and then the magistrates could have retired again. Lord Goddard had just before said that, if the clerk himself had taken the note in longhand there would be no objection to the magistrates sending for this note to refresh their memory. He appears thus to draw a distinction between shorthand and longhand notes and his remarks could be read as suggesting that it is unnecessary to read the clerk's longhand note aloud in court although a shorthand note should be so read. One may be

confident, however, that this was not his intention as a longhand note is more likely to be inaccurate and incomplete than a shorthand one.

The *Barry Justices* case

Later the same year the convicted defendant in *R.* v. *Barry (Glamorganshire) Justices; ex parte Nagi Kashim* [1953] 1 W.L.R. 1320, was successful in having the conviction quashed. A submission of " no case to answer " had been made and the clerk had, quite properly, advised the magistrates on this. This submission had been overruled and it was said that all that then remained were pure questions of fact. Defending counsel in his closing address had asked that the clerk should not retire with the magistrates. Nevertheless, the clerk retired with them at the end of the case for the defence; a point specifically mentioned by the High Court was that the defendant had previously been convicted in the same court when the same clerk was sitting. The magistrates' affidavits also showed that they had considered only matters of fact in their second retirement. In granting certiorari Lord Goddard, C.J., said that the fact of the clerk's knowledge of the defendant's previous conviction might suggest to the latter that information might be given to the magistrates in their private room which was not given in open court, so that justice was not manifestly appearing to be done.

It was shortly after this case that the first Practice Direction cited in the opening paragraph of this article was given.

Ex parte How

Another case in the same year was *Ex parte How* [1953] 1 W.L.R. 1480. The convicted defendant complained that, when the chairman of the magistrates trying him said " Dismissed," the clerk spoke to him and that the magistrates then retired with the clerk and the shorthand-writer, without the clerk being invited and without there being any question of law—and then presumably returned to announce the conviction. The appellant further stated that, from listening to the cases taken before his own, he was of opinion that the clerk controlled the chairman's decision. The Divisional Court refused leave to apply for certiorari to quash the conviction, Lord Goddard, C.J., remarking that the retirement of the clerk with the magistrates would not necessarily lead to the quashing of the conviction. If the defendant's allegations were accepted as true, this would surely have been a case where justice manifestly did not appear to be done, so one must assume that the Divisional Court did not place credence in them. The case seems, therefore, to be of no significance and will be disregarded.

Misconduct by the clerk

It is scarcely necessary to say that, if there is actual evidence of bias, unnecessary and excessive interference or interruption or other misconduct on the part of the clerk to the justices, a conviction or decision by the magistrates will normally be reversed. In *Hobby* v. *Hobby* [1954] 1 W.L.R. 1020, a matrimonial case, the clerk, in addition to other matters, had, by preventing the husband's solicitor from putting questions to the wife as to certain issues during her cross-examination, thereby put substantial obstruction in the way of that solicitor in the conduct of his case. The Divisional Court, in an appeal against the maintenance order made by the magistrates, ordered a re-hearing and said that justice did not appear manifestly to have been done. The Divisional Court did not refer to the decisions and Practice Directions mentioned above, it no doubt being considered that there had been such a breach of the ordinary rules of procedure as to justify the remission in the same way as if the conduct of a magistrate rather than of the clerk had been complained of.

R. v. *Consett Justices*

In this case, reported in *The Times*, 13th May, 1960, the magistrates' clerk, after retiring with the justices at an early stage to consider submissions (as was quite proper), had retired again at the close of the case, despite a protest from defending counsel. He returned before the magistrates did but made certain remarks about the case being " as dead as the dodo." He was apparently referring to *R.* v. *East Kerrier Justices, supra*, but it was possible to construe what he said as referring to the case then before the magistrates. The High Court expressed its disapproval of these remarks whatever they were intended to mean; Lord Parker, C.J., after mentioning certain other remarks by the clerk and his failure to tell defending counsel, on his second return, that he had been required to advise on law, said that in all these circumstances a person in court might feel a real likelihood that justice was not being done. Lord Parker continued by asking whether, even so, certiorari should go. It was a discretionary remedy, and one his lordship would allow to go only in an extreme case. In *R.* v. *Camborne Justices; ex parte Pearce* [1955] 1 Q.B. 41, the court pointed out that there must be shown a real likelihood of injustice—in that case, of bias—and the court had felt that the continued citation of the principle that justice must be seen to be done might lead to the erroneous conclusion that this was more important than that justice should be done. Certiorari then would not go for some flimsy pretext, but in the circumstances of this case his lordship considered that the order should go. Byrne, J., added that the circumstances were calculated to cause people to think that the clerk had joined the bench on questions of fact. The conviction was quashed.

Conclusions from cases

In the *East Kerrier, Barry and Consett Justices* cases certiorari was granted, and it was refused in *R.* v. *Welshpool Justices, supra*. In *Hobby* v. *Hobby, supra*, certiorari would almost certainly have been granted had not another remedy been available. Certiorari, as pointed out above, is a discretionary remedy and it seems that the mere fact that a clerk has retired with the magistrates even though there is no question of law to consider will not alone cause the grant of certiorari. The latter, indeed, is always a discretionary remedy, as Lord Parker pointed out, and there must be, it seems, not only a retirement when the sole questions appear to be ones of fact only but also some other circumstances to suggest to the parties and onlookers that justice is not being done, e.g., the clerk's knowledge or assumed knowledge of the defendant's previous conviction coupled with a protest against his retirement (the *Barry* case), or conduct and remarks by the clerk which show that he is exceeding his functions (the *Hobby* and *Consett* cases). As circumstances can vary so much, it would be tedious to try to think of examples of what may or may not be proper conduct by the clerk; it is perhaps sufficient to warn that a slight variation from the facts of any of the cited cases may make the difference between granting and not granting certiorari. Much will depend again on the contents of the affidavits which the magistrates and their clerk will file, as these may disclose that matters of law were properly discussed in the retiring room—including, perhaps, to the chagrin of the defending

lawyer, some points of law which he had omitted to notice himself and urge on his client's behalf. The Practice Directions cited above as to the clerk's duties and their limits should, of course, be carefully studied before any application for certiorari is begun as it would be a waste of time to complain of conduct authorised by them, unless there had been additional improper conduct which could suggest that justice was not appearing to be done.

When the clerk does not retire

There has also been a judicial pronouncement as to the behaviour of the magistrates' clerk during the time whilst the magistrates are deliberating and he is not with them. In a case noted at (1958), 122 J.P. News. 326, the clerk spoke to the prosecutor while the magistrates were in their room considering their decision; the conversation was apparently quite an innocent one. The defendant, however, put a sinister construction on this conversation and made statements which led to a libel action. In the course of the action Salmon, J., said that, in any case taking place before the magistrates, no conversation of any kind should take place between their clerk and the prosecutor except in the hearing of the accused.

In *R.* v. *Bradford City Justices; ex parte Muranyi*, noted at (1956), 120 J.P. News. 1, certiorari was sought on the strength of what counsel claimed to have overheard of a conversation in court between the magistrates and their clerk. This conversation, it was said, was not about matters of law but affidavits from the magistrates showed plainly that the discussion was as to whether certain evidence was corroboration. Certiorari was refused and the interest of the case lies in a remark by Lord Goddard, C.J., that neither advocates nor anyone else should listen in to what was said by the magistrates to their clerk.

Drafting justices' reasons

In *Johnson* v. *Johnson* [1961] 1 W.L.R. 50; p. 64, *post*, magistrates had decided a matrimonial case in the wife's favour and the husband gave notice of appeal. The clerk to the justices thereupon invited counsel who had appeared for the wife to assist him in drafting the reasons of the justices for their decision, for transmission to the Divisional Court. Counsel drafted the reasons and they were accepted by the justices and their clerk without significant alteration. The Divisional Court held that it was wrong for counsel or a solicitor on one side only to draft the reasons, as to do so would clearly seem suspicious and unfair to the other side. In *Cowlishaw* v. *Chalkley* [1955] 1 W.L.R. 101, it was said that the draft of a case stated by magistrates under s. 87 of the Magistrates' Courts Act, 1952, should be submitted to both parties and, if it was a complicated matter, both sides should be invited to draft it.

G. S. W.

NOTARIES PUBLIC—III

NOTARIAL EQUIPMENT AND FEES

THERE are two essential pieces of office equipment for a practising notary, his seal and his register. His uniform of office has fallen into disuse; it consisted in the middle ages of a monkish robe around which was worn a girdle from which hung an inkhorn and a pencase. "Away with him, I say; hang him with his pen and inkhorn about his neck," cries Jack Cade in Henry VI, part 2. The Ecclesiastical Notary when acting as a Bishop's Registrar wears a special silk gown and a full wig.

The notary's seal goes far back into history. Modern notaries use embossing machines, whose imprint is circumscribed with the notary's name and on which there may be a device, such as a ship, a bird or some heraldic design, often supported by a motto. In early times each notary had his own mark or sign, often quite an elaborate affair which he used alongside or complementary to his signature and his manuscript. Canon J. S. Purvis' work on Notarial Signs, published by St. Anthony's Press for the Borthwick Institute of Historical Research, is well worthy of study. Seals in the form of wax impressions seem to have been rarely used.

Notary's register

The register of a notary is his record book. The custom of keeping one is very ancient, but its need is obvious, for the notary's duty is to make and hence to keep records of other people's business. In the early seventeenth century the definition of a notary's function included the phrase: "... *atque ita dignam plenamque fidem ad perpetuam posterum memoriam* ...," which clearly implies the need for the keeping of a register. Some notaries keep their registers in complementary sets, a register of general business and a protest book, into which latter are written notes of bills of exchange protested and of ship protests. These registers are generally preserved for the lifetime of the notary and for some while thereafter, and they should contain a brief note at least, if not an abstract or copy, of each instrument upon which the notary has performed some act.

About the status of a notary's register there has been a little controversy. One argument is that because a notary is, according to his title, a public officer, his register is open to inspection. So, it was said, in a dispute about damage to cargo the insurers of the cargo owners were entitled to inspect the page of the notary's register upon which the protest of the ship-master was written. The stronger opinion, however, is that the register of the notary is privileged, the only person having any right of inspection being the client for whom the particular business recorded was undertaken. It is presumed, however, that in litigation involving the client the entry in the register (in the above case the ship protest) would be a matter for discovery.

It is in this matter of his register that the notary differs radically from commissioners for oaths and other attesting officers. If documents upon which a notarial act has been done for use abroad are entered it should be possible for the notary's register at least to provide secondary evidence of their execution or attestation. Possibly this act of recording is one reason for notarial fees for attestation being greater than those of commissioners.

Fees

Notarial fees are not a matter regulated by legislation. They are generally promulgated by way of recommendation by the council of the professional society to which a notary

belongs. For a simple attestation the current fee charged outside London is 10s., but a notary who is also a commissioner for oaths is in such simple cases advised to take an affidavit in his latter capacity. If the document also requires sealing the fee is increased by 5s., and for the provision of a full notarial certificate where the act of execution is witnessed by two independent witnesses whose identity the notary vouches under seal the fee taken is £1 11s. 6d. For many other items of notarial work, copies, attendances, perusals, etc., the fee of a notary is often similar to that charged by a solicitor for comparable work, but the principle of the element of value to the client underlying, for example, Schedule I Conveyancing Costs is disregarded except in the case of fees for protesting bills of exchange.

In notarial business the fees charged by consulates of foreign countries for legalisations are in some cases greater than those of the notary. There is no international custom or scale. Some countries exact a few shillings, others pounds, for their consular service of legalisation. Practitioners who require legalisation are best advised to inquire of the consulate beforehand the size of the fee required.

Literature

Literature on the subject of notarial practice is very scanty. The latest edition of Brooke's "Treatise on the Office and Practice of a Notary of England" was published in 1939 and is now virtually unobtainable. Murray's "Law of Scotland relating to Notaries Public," which has a similarity to Brooke, is also out of print. There is an excellent short section of Halsbury's Laws of England, 3rd ed. (vol. 28), generally on the subject of notaries and there are a few notarial precedents in the Agency and Testimonium sections of the Encyclopædia of Forms. Consequently, individual notaries to a very large extent tend to continue and adapt forms which they have used over the years. There are, however, plans afoot for further publications of handbooks for notaries public. *(Concluded)* G. E. DELAFIELD.

[Last week's article contained a paragraph on legalisation (p. 27). Reference was there made to the part played by the Home Office. Since the article was written and the author's proofs passed, the practice has changed and the Foreign Office is now solely responsible for legalising, on appropriate documents, signatures or seals emanating from, amongst others, notaries public and commissioners for oaths in England and Wales (see *Law Society's Gazette*, January, 1961, p. 47).—ED.]

Country Practice

SUCCESS STORY

I SEEM to remember promising to my readers the secrets of financial success. The time has come, the B.B.C. has revealed that provincial solicitors can earn up to £8,000 per annum, and it becomes my clear duty to disclose how you, too, can roost among the higher income brackets. But please do not leave this issue lying around the waiting room.

To make it easier for unsophisticated city solicitors, I had better describe how *not* to make a huge income; elementary mistakes have to be pointed out if they are to be avoided.

First, then, you must join, purchase or set up a country practice. To join is quite simple. In my own case, my worthy partners were looking for a common-law man who could tackle straightforward conveyancing. That was in 1948, and I am still waiting for my first taste of straightforward conveyancing. (I am just recovering from a straightforward, middle class residence owned by a Scots lady who died before completion, and whose personal representatives miraculously managed to appoint new trustees before probate —confirmation, I mean—was granted.) As for common law, the legal problems swarming round our corner of the market place all relate to unheard-of situations quite baffling to the keenest legal brains in the neighbourhood.

One fatal mistake, once you are installed in the country office of your choice, is to see a client without an appointment. You must therefore guard against the girl on the telephone interrupting your perusal of a settled land abstract in such a way as: "Please, Mr. Highfield, there is a gentleman in the general office wanting to know if we have anyone who knows anything about law." The novice may easily succumb to this approach and, even if he spends the next half-hour quite entertainingly, he will not make a fortune. The example I have quoted in fact related to a gentleman having trouble with a frosted-glass lavatory window overlooking his neighbour's hen run. One way and another the atmosphere was, I gathered, becoming somewhat poisoned.

Another vulgar error is to make unwarrantable distinctions between one client and the next. There is only one true distinction—Costs Potential. Beginners often allot high Absorptive Effort to a client with low Costs Potential. To clarify my meaning, take two homely examples. Mr. *X*, with a Costs Potential of 100 guineas, wishes to lend £10,000 on first mortgage of a productive but muddy freehold farm. One assumes an Absorptive Effort of about five man-hours. Young Mrs. *Y*, on the other hand (Costs Potential a doubtful five guineas), asks you to consider whether a divorce is possible on the grounds of her husband's artistic tastes. He apparently wishes to paper the walls of the marital home, beginning with the bedroom, with immodest art-forms at which even a bishop might boggle, and which make Mrs. *Y* fear for her own mental health. A simple proportion sum will reveal that the Absorptive Effort in Mrs. *Y's* case must be restricted to fifteen minutes if a balanced office economy is to be maintained. The merest glance at the wealth of evidence, surreptitiously removed by Mrs. *Y* and now produced for inspection, clearly shows that she has already outstayed her welcome, and it is time to get back to Mr. *X's* mortgage.

This brings in the Human Factor, of course. Ignore it. You will be in great danger of a serious reduction in your surtax liability if you treat clients as being human. Human beings are met with only in off-duty hours, and the truly dedicated solicitor must therefore assume that they do not exist. If only this attitude of mind can be maintained, the wasteful condition known as Highfield's Disease will be avoided. This condition renders its victim prone to such unrewarding symptoms as laughter and sadness and (comparative) freedom from ulcers. In the advanced stages of this complaint, the patient may find himself reading, and sometimes writing, a good deal of nonsense. During interviews with frightfully important people, the patient may give

way to intermittent daydreams, though a cheerful rogue is certain to be given an attentive hearing. Remember, therefore, that clients are not human, and that human beings (if they exist) are not clients.

The short cut to financial success is that of a successful livestock breeder: select and re-select your clients until you have not more than a dozen good ones. Root out and destroy all the rest; and that goes for your staff, too. When you have reduced your clientele to a dozen millionaires, do write to me for further advice.

Meanwhile, I must break off to attend to a straightforward conveyancing problem concerning cross rights of light and air over a hen run. On second thoughts, I had better run through the documentary evidence in Mrs. *Y's* divorce case; properly handled, and before the right judge, and with hand-picked counsel, there might be a case . . .

"HIGHFIELD."

AUTREFOIS CONVICT

THE principle, *nemo debetbis vexari pro una et eadem causa*, is unshakably established in our administration of justice. Yet it has never been invoked on behalf of a professional man when subjected to disciplinary action by some statutory body adjudicating on a matter previously investigated in a criminal court of the land, e.g., a surgeon tried by the Medical Council for infamous conduct involving criminal abortion—although in such cases the award of the disciplinary body and the sentence of the court mutually influence each other by way of mitigation. However, that principle was ingeniously craved in aid of two prisoners who—under rr. 42 (13) and 44 of the Prison Rules, 1949—had been dealt with by the visiting committee of justices for escaping from prison, and were subsequently tried for that exploit under the common law at the following Winchester assize (*R.* v. *Hogan*; *R.* v. *Tompkins* [1960] 3 W.L.R. 426).

Prison breach

The facts were that two prisoners serving sentences of preventive detention at Parkhurst escaped from one of the prison buildings through a skylight, the wire underneath which had been cut as part of their plan to escape. On their recapture, they were dealt with as aforesaid by the visiting committee of justices, which made a number of penal awards against each of them. Later both men were tried on an indictment charging them, *inter alia*, with prison breach—that is, escaping by force—and were convicted on that and other counts. They appealed against their conviction for that offence on the ground that, since they had been convicted of simple escape by the visiting committee, they could not subsequently, on the same evidence, be charged with prison breach—a charge of the same offence of escape in an aggravated form—on the authority of *R.* v. *Miles* (1890), 24 Q.B.D. 423. In fact, at the instance of counsel for the prosecution, a count of simple escape was struck out by the trial judge, in view of the said action by the visiting justices.

Ruling of Court of Criminal Appeal

It was held by the Court of Criminal Appeal (*a*) that the principle that a man who had been convicted of an offence could not subsequently be charged with the same offence in an aggravated form, in relation to the same facts, was confined to courts of competent jurisdiction; (*b*) that the visiting committee had not convicted the appellants of the common-law offence of simple escape, though—as a matter of internal organisation—it had found them guilty of an offence against discipline; (*c*) that, therefore: (1) there was nothing which precluded the subsequent charge of common-law escape in the aggravated form of prison breach; (2) strictly, the learned judge need not have struck out the count of simple escape, though clearly it was the sensible thing to do; and (3) the visiting committee could have dealt with the breach against discipline if it had come before it after the appellants had been convicted on indictment; and (*d*) that the fact that the appellants had already been dealt with by the committee, and had forfeited certain amenities and privileges for simple escape by way of breach of discipline, was a matter for the learned judge to take into consideration when passing sentence—which no doubt he had done.

Conviction the bar

A hundred years ago Cockburn, C.J., said: "We must bear in mind the well-established principle of our criminal law that a series of charges shall not be preferred, and, whether a party accused of a minor offence is acquitted or convicted, he shall not be charged again on the same facts in a more aggravated form" (*R.* v. *Elrington* (1861), 1 B. & S. 688, at p. 696). That passage was quoted with approval in *R.* v. *Miles*, *supra*, where it was held that a person who had been convicted summarily of an assault by a court of competent jurisdition, but had been discharged without any sentence of fine or imprisonment—on giving security to be of good behaviour—could not thereafter be convicted on an indictment for the same assault. It is the conviction and not the nature of the sentence which constitutes the bar to a man being placed in peril of legal penalty more than once on the same accusation. May he be tried again for the same acts with the addition of malice and design? In this case the first count in the indictment was for unlawful and malicious wounding, the second for inflicting grievous bodily harm, the third for assault occasioning bodily harm, and the fourth for common assault. It was not disputed that the offences charged in these four counts related to the same matter as the offence for which the accused had been summarily convicted. Though not strictly a case of *autrefois convict*, it was very much like one.

Interpretation Act meant what it said

Therefore, if a man were convicted of common assault and it were subsequently discovered that that same assault had been accompanied by an intent to murder, he could not—on the same facts—be indicted with assault with intent to murder. It would be otherwise if the victim of the assault died after the conviction. "It is not every summary conviction or acquittal for a common assault which will operate as a bar to an indictment for an offence in which that assault was an element. It could hardly be contended that a previous conviction for a common assault could be pleaded in bar to an indictment for murder, though to prove the murder it might be essential to prove the assault adjudicated upon. For the offence of murder consists in the *felonious killing*" (per Hawkins, J., in *R.* v. *Miles*, *supra*, at p. 433). Indeed,

similar circumstances occurred nearly sixty years later in *R.* v. *Thomas* [1950] 1 K.B. 26, where the defendant was first convicted of wounding with intent to murder, and then—on the victim subsequently dying of the wounds inflicted—indicted for murder. The trial judge, Devlin, J., held as a matter of law that there was no evidence on which the jury could find that the offence of which the accused had been previously convicted was the same as that with which he was now charged, and under his direction the jury returned a verdict that the plea of *autrefois convict* had not been established. On appeal, the Court of Criminal Appeal upheld his lordship's ruling, deciding that a plea of *autrefois convict* which referred to the conviction of wounding was not a good answer to the indictment for murder. Moreover, it decided that s. 33 of the Interpretation Act, 1889, meant exactly what it said, that is, that no person "shall be liable to be punished twice for the same offence"—not for the same act. "Not only is it not the law that a person shall not be punished twice for the same act, but it never has been the law. That it is not the law was expressly decided as far back as 1867 in *R.* v. *Morris* (10 Cox. C.C. 480, at p. 484) by the highest criminal court in the land then existing, the court for the consideration of Crown Cases Reserved" (per Humphreys, J., in *R.* v. *Thomas*, *supra*, at p. 31).

JOSEPH YAHUDA.

Property Practice

DATING A DEED—I

"SHALL I date the conveyance to-day and the mortgage to-morrow?" This query, or some variation of it, is instantly recognisable as one of the more popular lines from the melodrama called "completion." All of us agree that deeds should have a date on them but not all of us appear to regard the date as being of much importance and few appear to be aware of any principles governing the choice of date. "Please do not date" is the customary instruction pencilled on a deed sent to a client for execution, and a possible inference would be that the complex matter of inserting a date is not to be meddled with by the abominable layman. In fact, the idea behind the instruction is probably that until completion the correct date to insert is not known, yet it will be submitted below that this idea is usually quite wrong. Instead the instruction to the client should be "Please insert the date upon which you execute this deed in accordance with our directions," i.e., the date upon which the deed is signed, sealed and delivered as an escrow.

The correct date

However, the commencing presumption is that the date, if any, appearing on the deed is the correct date (*Browne* v. *Burton* (1847), 17 L.J.Q.B. 49), though this is a rebuttable presumption, Patterson, J., saying (at p. 50), "but as soon as the contrary appears, the apparent date is to be utterly disregarded." The rule is that a deed takes effect from execution being completed by delivery and the only correct date is the date of delivery. This is old-established: "All deeds do take effect from, and therefore have relation to, the time not of their date but of their delivery; and this is always presumed to be the time of their date unless the contrary do appear": Shep. Touch. 72, and there is much supporting authority.

A query will immediately come to mind as to the position where two deeds both bear the same date or were both executed on the same day, particularly when the usual rule is recalled that the law disregards fractions of a day. In the words of Fry, J., "I think the law stands in this way, that when two deeds are executed on the same day, the court must inquire which was in fact executed first, but that if there is anything in the deeds themselves to show an intention, either that they shall take effect *pari passu* or even that the later deed shall take effect in priority to the earlier, in that case the court will presume that the deeds were executed in such order as to give effect to the manifest intention of the parties": *Gartside* v. *Silkston Coal and Iron Co.* (1882), 21 Ch. D. 762, at pp. 767–8. See also *Church of England Building Society* v. *Piskor* [1954] Ch. 553 (C.A.), as to the *scintilla temporis* between purchase and mortgage. Thus the position if unclear is clarified by presumptions.

It follows from the above that the lack of a date does not affect the validity of a deed, and parol evidence is admissible to show the correct date: *Morrell* v. *Studd and Millington* [1913] 2 Ch. 648 (per Astbury, J., at p. 658). Thus it was said in *Goddard's Case* (1584), 2 Rep. 4, at p. 6, that "the date of a deed is not of the substance of a deed; for if it hath no date, or hath a false or impossible date, as the 30th day of February, yet the deed is good."

All this may reinforce the first reaction that the insertion of a date in a deed, even though incorrect, is a matter of little importance. However, the reaction is rendered erroneous by the conflict between the fact that the correct date itself is occasionally of great importance and the fact that the commencing presumption is that the date inserted is the correct one. Circumstances may easily occur in which it is wished to rebut this presumption but it is found difficult or impossible to do so.

Importance of date

Accordingly, before dealing further with what date is the correct one to insert, it is proposed to discuss quite briefly some of the matters which turn upon the date of the deed. The object of this discussion is to indicate when the correct date itself may be important and it will be confined for the sake of brevity mainly to the date of a deed of conveyance of land.

The first, most obvious, point is the basic rule governing priority of estates and interests, namely, that they rank in order of creation. A person who obtains a legal estate or interest in land is not concerned with subsequently created estates and interests, whether legal or equitable, unless his priority is displaced by fraud, estoppel or gross negligence in relation to the title deeds. The same rule applies to a person who obtains an equitable interest so far only as subsequently created equitable interests (or legal interests created without value) are concerned; otherwise a bona fide purchaser for value of the legal estate will obtain priority unless he takes

with notice (bearing in mind the modern tendency to replace the doctrine of notice by provisions for registration of rights).

Secondly, the word "date" appearing in a deed is to be construed as meaning the day the deed is dated and not that on which it was delivered (assuming the deed is not undated): *Styles* v. *Wardle* (1825), 4 B. & C. 908 (per Bailey, J., at p. 911). Care must, therefore, be taken not to conflict with the actual intentions of the parties.

Thirdly, there are a number of time limits which are calculated by reference to the date of a deed. Thus, before completion, where a person has obtained an official certificate of search in either the land charges register or the local land charges register, then he is not affected by any entry made after his search (unless it is already protected by a priority notice) provided the purchase is completed before the expiration of fourteen working days: Law of Property (Amendment) Act, 1926, s. 4 (2), as slightly amended by the Land Charges Rules, 1940. It will be noted here that the reference is to completion of the purchase, not to the date of the conveyance, which, depending on the construction of the former, may not be the same (see below). None the less, for practical purposes (particularly subsequent investigation of title) the date actually on the deed is normally treated as the operative one here.

Stamp duty

Again, after completion, despite the apparent theory of the Stamp Act, 1891, that instruments should be stamped before execution, s. 15 (2) of that Act enables certain specified instruments (including a conveyance on sale) to be stamped or presented for adjudication without payment of a penalty within thirty days after they have been first executed or first received in the United Kingdom. In practice, the Commissioners apply these provisions to most non-specified instruments unless their stamping after execution is prohibited by statute. The same time limit applies to the "produced" stamp under s. 28 of the Finance Act, 1931, although in practice the Commissioners add this stamp without payment of penalty on production of the document at any time. The date of the deed will, as a matter of stamping practice, be treated as prima facie evidence of the date of execution. The dating of escrows will be mentioned below, but it is noted in Alpe, "The Law of Stamp Duties," 25th ed., at p. 69, that for stamp duty purposes an escrow is not an executed instrument; also that where it is alleged that the late presentation of an instrument, according to its date, is due to its having been held in escrow, formal evidence will be required as to the facts and, in particular, as to the actual date of delivery as an effective instrument.

Further, s. 14 (4) of the Stamp Act, 1891, provides that an instrument within that section is not (except in criminal proceedings) to be given in evidence or to be available for any purpose whatever "unless it is duly stamped in accordance with the law in force at the time when it was first executed." These words refer to the actual date of execution, not always the same as the date inserted in the deed, which latter date is not treated as conclusive: *Clarke* v. *Roche* (1877), 46 L.J. Ch. 372 (deed tendered in evidence appeared to be sufficiently stamped according to its date, but was refused on proof of execution some years before that date when the stamp duty was different, on like wording in the Stamp Act, 1870).

It will be noted that both ss. 14 and 15 of the Stamp Act, 1891, use the words "first executed." This could give rise to difficulty where a deed has to be executed by several parties in order to operate, e.g., a conveyance on sale of land vested in four trustees, execution of the deed by whom may well be separated by days if not weeks. Under s. 9 (7) (*c*) and (*d*) of the Stamp Duties Management Act, 1891, if such a transaction is never completed a refund of stamp duty may be claimed (complying with the conditions specified). The real difficulty might arise if the transaction were completed, because in theory the thirty days for stamping started running when the first trustee executed the deed. However, it has been held that an instrument which has been executed by one party but not by all necessary parties is admissible in evidence although unstamped: *Sinclair* v. *Inland Revenue Commissioners* (1942), 24 T.C. 432. Also practice again comes to the rescue by treating the date inserted in the deed as prima facie correct.

Other time limits

By virtue of s. 123 of the Land Registration Act, 1925, *inter alia*, every conveyance on sale (as therein defined) of freehold land in an area of compulsory registration of title becomes void on the expiration of two months from the date thereof, with certain exceptions, unless an application for first registration has been made. The result of exceeding this time limit is not always as fatal in practice as it sounds. Normally, if an application lodged out of time is accompanied by a letter stating some sufficient excuse, the registrar will make an order (fee £1 1s.) extending time.

Other time limits after completion which may be relevant are:—

(i) Between fourteen and twenty-eight days after a priority notice in respect thereof, to preserve priority there must be registration of any charge, instrument or matter: Law of Property (Amendment) Act, 1926, s. 4 (1) (as slightly amended by Land Charges Rules, 1940).

(ii) Within one month of a conveyance of land charged with a tithe redemption annuity the vendor must furnish particulars to the Tithe Redemption Commission: Tithe Act, 1951, s. 56.

(iii) Within three months after the conveyance of land subject to land tax the purchaser or donee of the fee simple must notify the registrar.

(iv) Within a specified period, if any (e.g., twenty-one days), it may be necessary to notify the landlord of an assignment of leasehold property.

Forgery

Finally, and rather frighteningly, by virtue of s. 1 (1) of the Forgery Act, 1913, ". . . forgery is the making of a false document in order that it may be used as genuine . . . and forgery with intent to defraud or deceive . . . is punishable . . ."; and a document is false within the meaning of that Act, *inter alia*, if "the time or place of making, where either is material . . . is falsely stated therein" (s. 1 (2)). As to whether or not the date is material, see *R.* v. *Wells* [1939] 2 All E.R. 169 (C.A.), where a solicitor-trustee was held criminally liable in respect of the ante-dating of an endorsement on a settlement to negative the effect of provisions in the Finance Bill, 1936, in case they became law. Thus adjusting the date to comply with one or other of the time limits mentioned above may prove a dangerous practice.

Apart from personal liability, the rule is that a forged document is null and void: see *Kreditbank Cassel* v. *Schenkers, Ltd.* [1927] 1 K.B. 826. If this consequence were to follow from an incorrectly dated deed, it would perhaps take some explaining to one's client! "The same result [that

is to say, nullity; it is none the less forgery] would not necessarily follow, however, if a man were, for example, to forge the date on a cheque, because he thought that, it being overdue, there was a possibility that awkward questions might be asked": per Devlin, J., in *Kwei Tek Chao* v. *British Traders and Shippers, Ltd.* [1954] 2 Q.B. 459, at p. 476. The inference from this obiter dictum is that if a deed is rendered a forgery merely by the insertion of an incorrect date it will "not necessarily" be avoided, but that, depending on the circumstances, it might be.

(*To be concluded*) P. P.

Landlord and Tenant Notebook

LANDLORD AND TENANT IDENTICAL

In *Rye* v. *Rye* [1960] 3 W.L.R. 1052 (C.A.), the Court of Appeal agreed with Buckley, J., in holding that two people could grant a tenancy to themselves, and could do so by parol, but did not agree with the finding that they had done so.

The facts were, of course, unusual. In 1942 the plaintiff and his brother were partners, the plaintiff's interest in the partnership being greater than that of his brother. When they bought a freehold property, as tenants in common in equity in equal shares, and occupied it for their partnership purposes, they verbally agreed to pay themselves a rent (of £500 per annum exclusive) in equal shares; according to the plaintiff's particulars "there was no definite time agreed."

The plaintiff's brother died in 1948, and the defendant, son of the deceased, and a trustee of his will—he and the other trustee and the plaintiff becoming registered proprietors of the freehold—then came upon the scene. His uncle took him into partnership. The partnership was dissolved in 1957 but winding up had not been completed when the action was brought.

The dispute arose in this way. The defendant had continued to occupy a room in the building after the dissolution of the partnership. The plaintiff objected, and based his claim on the 1942 alleged tenancy, as survivor (*jus accrescendi*): he thus laid claim to a tenancy of the whole building, and asked for a declaration, an injunction, possession, damages, etc.

The reports do not tell us how the plaintiff and the trustees of the deceased brother's will came to be registered proprietors of the freehold, but I propose at this stage to say something about the law relating to concurrent interests as affecting the position.

Concurrent interests

The conveyance of the property to the plaintiff and the deceased brother had expressly made them tenants in common in equity in equal shares, and this would have made a 50 per cent. interest in the building part of the deceased's estate. This provokes the thought that it would have been interesting to know what the will provided. Rather more intriguing is the question why it was not contended that the alleged tenancy was or would have been a tenancy in common in equity: *Lake* v. *Craddock* (1733), 3 P.W. 158. (I do not suggest that it never occurred to anyone, for it may be that the result would not have altogether suited the defendant.)

No writing

The first issue raised, then, was that there was nothing in writing, and argument centred on the meaning of the word "conveyance" (the action was brought in the Chancery Division). It was urged that by the Law of Property Act, 1925, s. 52 (1), all conveyance s are void for the purpose o creating a legal estate unless made by deed and that by s. 205 (1) (ii) "conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will.

Both courts decided this point in favour of the plaintiff on the ground that the definition was "not exclusive or exhaustive." The comment that suggests itself is that, though it says "includes" and not "means," the concluding words, "except a will," might be said to make the definition exhaustive; but this interpretation would indeed be inconsistent with the provisions of s. 52 (2), which excludes from the operation of the above-mentioned subs. (1), *inter alia*, tenancies not required by law to be evidenced in writing, and with those of s. 54, which declares the right to grant a tenancy taking effect in possession for a term not exceeding three years by parol. It has been shown that this applies to periodic tenancies which may last more than three years: *Re Knight; ex parte Voisey* (1882), 21 Ch. D. 442 (C.A.).

To self

Lord Evershed, M.R.'s opening statement was a comment on the extreme artificiality of the case—"for here the landlords and the tenant, if they be tenants, are the same two persons"—and later the learned Master of the Rolls referred to the operation as a strange one. And so indeed it would strike anyone with but a smattering of jurisprudence (using that word in the strict sense, and not as a synonym of "law"): whenever there is a right or an obligation, there is a person of inherence and a person of incidence, etc.

The problem was then dealt with by reference to the Law of Property Act, 1925, s. 72 (4)—new in 1925—by which two or more persons may convey any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third party.

It is, in my submission, significant that this subsection speaks of property *vested* in those conveying it. The vesting may itself be an artificiality: take the "vesting" of an intestate's estate in the Probate judge (in the same manner and to the same extent as formerly in the case of personal estate it vested in the ordinary) by the Administration of Estates Act, 1925, s. 9. The court was not called upon to consider whether there was a vesting in possession or a vesting in interest (see *Richardson* v. *Robertson* (1862), 6 L.T. 75, on the ambiguity); and the subsection does say "(whether or not being trustees . . .)" and follows one by which a person may convey land to or vest land in himself. I would, however, suggest that the situation might have been made to appear less Gilbertian if reference had been made to certain authorities on merger; or, one might say, on non-merger.

Different rights

For while, prima facie, there is a merger whenever a greater and a less estate coincide in the same person without any intermediate estate in between, this happens only when the two estates are held by the same person in the same right, and it has been shown that a tenant may prevent a merger resulting from his purchasing the freehold by having it conveyed to a trustee for himself: *Belaney* v. *Belaney* (1867), L.R. 2 Ch. 138. Then, the Chancery courts were always inclined to consider intentions and interests, and hold that a term merged at law still existed in equity (*Chambers* v. *Kingham* (1878), 10 Ch. D. 743); and by virtue of the Law of Property Act, 1925, s. 185, the equitable rule prevails.

The law which is concerned to keep two interests alive may well be anxious to promote their creation if this is what is intended; but, in *Chambers* v. *Kingham* as in the earlier case, it could be said that term and reversion were not held in the same right and, had it not been for the vesting and the fact that the landlords were tenants in common in equity, it is difficult to see what would prevent the maxim *nemo potest esse tenens et dominus* from applying.

No definite time

However, having agreed that the parties could have become landlords and tenants, the Court of Appeal differed as regards the inference to be drawn from the facts. Harman, L.J., said that there seemed to have been no beginning agreed upon, still less an end; Lord Evershed, M.R., attached great importance to the plaintiff's "my brother and I mutually agreed that the firm of Rye and Eyre should pay £500 per annum exclusive as the rent of . . . but there was no *definite time* agreed." Buckley, J., had, presumably, considered that the date of commencement would be fixed by reference to the agreement as a whole and to entry (*Re Lander and Bagley's Contract* [1892] 3 Ch. 41), and that "no definite time" did not mean "no definite habendum" when there was reference to a yearly rent.

R. B.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Timing of Estate Duty Payments

Sir,—I read that a Private Member is introducing a Bill to facilitate the grant of probate for small estates. But surely the rule requiring the payment of estate duty before probate should be abolished in all cases. The rule was introduced by the Stamp Act, 1815 (55 Geo. III, c. 184), and was perpetuated by the Customs and Inland Revenue Act, 1881, s. 30, and applied to estate duty by the Finance Act, 1894, s. 8. In those days investments were not liable to the violent and frequent fluctuations in value which now so often occur. The rule applies only to property which passes to the executor as such, and there appears to be no reason why the total abolition of the rule should lead to any loss of duty.

Perhaps one of your learned contributors could be prevailed on to work out the modifications of the law and practice necessary to carry my proposal into effect.

L. H. Elphinstone.

Lyndhurst,
Hants.

Notaries Public

Sir,—I think Mr. G. E. Delafield in his article on Notaries in your issue of 6th January (p. 3) is attributing to Henry VIII a commercial concern he never had and undervaluing his ecclesiastical instincts.

The power to appoint notaries, issue special licences to marry and confer Lambeth degrees was delegated to the Archbishop of Canterbury by the Pope when the Archbishop was made a *legatus natus* a long while back (these powers are still known in ecclesiastical circles as the legatine powers). Section 3 of the Ecclesiastical Licences Act, 1533, to which Mr. Delafield refers, and which was really not so very long after the first breach with Rome, did no more than confirm the Archbishop in his legatine powers generally. Incidentally the Act expressly forbade the Archbishop to extend these powers beyond those exercised by the Court of Rome or to charge any greater fees than the Court of Rome.

F. C. Anderson.

London, E.C.4.

Publicity for Solicitors

Sir,—The article entitled "Delay in Signing Contracts" (p.30) performed a great service in indicating that much delay could be eliminated if solicitors were to co-operate. However, the article also indicated that even more delay could be eliminated if clients were to co-operate with us, particularly if vendors were to instruct us on the same day as they instruct the estate agent.

Could not this last point be used to induce The Law Society to permit the profession as a whole to bring to the notice of potential clients not only what services we provide, but how and when they may best be taken advantage of? Why not, indeed, advertise on the lines of "Consult your solicitor when/because . . ."? This would not only be in our interests but in those of the public. Let us treat the recent B.B.C. documentary "The Lawyers" as the thin end of a wedge which is not to be withdrawn but pushed further in to reveal our public repellent image as false.

J. T. Farrand.

Wembley Park,
Middlesex.

"The One-Armed Bandit and the Law"

Sir,—We were very disappointed when reading your article on this subject at 104 Sol. J. 1065 to see that you dogmatically stated that all stake money apart from that paid to winning players must be used for purposes other than private gain, e.g., the profits are paid into club funds which in turn are used for the benefit of members collectively. You have not distinguished between proprietary and members' clubs and you have made no reference to the Huddersfield case, *Bradley* v. *Payne and Others*, where a contrary view was taken which, in your paragraph in Current Topics at 104 Sol. J. 788, you were slow to criticise. Have you changed your view? If so, we shall be grateful for your reasons distinguishing between a proprietary and a members' club.

Walker, Templer & Thomson.

Tonbridge.

[*Our contributor writes:* This note refers only to the conditions for the use of gaming machines, i.e., "fruit machines" or "one-armed bandits."

It is in fact s. 17 (2) (*c*) of the Betting and Gaming Act, 1960, which "dogmatically states" that:—

> "all stakes hazarded are applied either in the payment of winnings to a player of the game or for purposes other than private gain."

An extensive search has not revealed that the words "private gain" (which also appear in the Small Lotteries and Gaming Act, 1956) have been judicially defined. It is understood that the decision of the Huddersfield magistrates is on appeal to the High Court, and in the absence of any binding authority the Scottish decision of the High Court of Justiciary in *Bow* v. *Healy* 1960 S.L.T. 311, on the interpretation of s. 4 of the Small

Lotteries and Gaming Act is to be preferred. The inferior court found that in holding a tombola drive a welfare institute had not applied any money for purposes of private gain, and although the appeal was primarily concerned with the meaning of "an entertainment" the court held that the welfare institute had committed no offence under s. 4.

Further, since s. 23 of the 1960 Act covers the situation where gaming is conducted for the benefit of a charity, s. 17 (2) (*c*) would seem to be otiose if it does not allow winnings to be applied for the benefit of a society. While no doubt such a factor as the size of the society may be relevant in deciding whether money has been used for purposes other than private gain, the intention is clearly to prevent the operation of gaming machines by private individuals or commercial bodies for their own profit. Can it really be the effect of s. 17 (2) (*c*) that all stake money must either be returned as winnings or devoted to charity?

I should like to take this opportunity to clarify the statement on the effect of s. 16 (1) and (2) of the 1960 Act. The sentence—

> If the first of these conditions is broken an offence is only committed if ten or more persons were present at the gaming

is misleading and should be replaced by—

> If the first of these conditions is broken an offence is committed, but where evidence is given that ten or more persons were present the onus is on the defence to prove that the gaming was lawful.]

HERE AND THERE

PROBLEM TENANTS

I AM rather wondering how the rural district council of Swaffham in Norfolk are getting on with their scheme, announced just before Christmas, for solving the difficulty set by "problem" tenants of council houses, tenants with behaviour patterns which annoy their neighbours and worry the council. There are many ways of annoying one's neighbours and it is, of course, possible that a typical British family might find it intolerable to live in the vicinity of persons who played Mozart concertos, held riotous dramatic readings of Shakespeare, hammered away in the garden on sculpture in the manner of Henry Moore, and ruined everybody else's enjoyment of the "telly" by persistently turning on the Third Programme. But somehow I doubt whether that is the particular sort of problem that the Swaffham council have in mind. A cheerfully non-interventionist council would, of course, blandly refuse to treat mere human vagaries, however remarkable, as constituting any problem at all, simply observing that it takes all sorts to make a council estate, and leaving neighbours to settle their differences for themselves by neighbourly negotiations or reprisals.

DOWN IN THE FOREST

BUT the Swaffham councillors are made of sterner, or, anyhow, more confidently paternal, stuff. They accept the responsibility of maintaining on their estates the greatest happiness of the greatest number. What, then, of the intransigent minority? Shall they be condemned to houseless vagrancy for their inconsiderate behaviour? No, we are far too humane for that now. Shall they be sent to a welfare home? No, that only puts an extra burden on the ratepayers. Is there another alternative? There is, and it is pleasantly ingenious. Away in the depths of Thetford Forest are two houses belonging to the Forestry Commission. If the council acquire these for occupation by the "problem" tenants, there is the ready-made answer to the complaints of the neighbours, for there are no neighbours at all closer than the little hamlet of Lynford a mile away. Nor is there gas, or electricity, or main water, or a bus service, save the daily school bus. Peace, perfect peace, reigns supreme. Nothing is to be heard but the sighing of the wind in the branches, the carolling of the birds and the squirrels cracking their nuts. Those who feel that they are independent of their neighbours' approval can give their egos a good stretch in the spacious airiness of the woodland glades and in the consciousness that they are now independent of their neighbours' company as well. Their sturdy independence can find vent in any sound or gesture they care to make and, since presumably both the houses in the forest will be occupied by exactly the same sort of families, each will have the opportunity and leisure to study itself as in a looking-glass.

PUTTING IT ACROSS

IN earlier times, when all forests were enchanted, no doubt the local council, or rather the court leet fulfilling analogous functions, might well have called in the services of some local sorcerer to add the finishing touch to the transmigration by transforming the offending families into toads or foxes or pheasants, whichever was deemed most appropriate to their character and most likely to fit them for their new surroundings and way of life. But such a step might well be regarded now as oppressive and out of date. Public bodies must be vigilant about their public relations, and the Swaffham councillors have been careful to state categorically that "so far nobody has been earmarked" for the houses. That is a wise restraint. Branding in the ear should only be resorted to in the most extreme recidivist cases. Perhaps the best way of putting the project in a light which will appeal to the public would be to couch it in the magical jargon of psychiatry, to make it quite clear that there was no question at all of punishment, but only of reorientation and integration of the psychopathic personalities of the patients; there should be much talk of introversion and extroversion and compensation. So viewed, the sojourn in the forest would assume the guise of a psychological rest cure away from the tensions of coping with the problems of day-to-day contacts. The tasks imposed by the absence of gas, electricity and main water would be in the nature of psychotherapy or occupational therapy. Expressed in those terms, the project would be unassailable. And anyhow, what else *can* be done with maladjusted tenants? At least it seems worth while sending them to a place where they can find tongues in trees and sermons in stones. The only danger is that they might breed a race of Robin Hood outlaws whose chief occupation was taking pot-shots at the high constable of Swaffham.

RICHARD ROE.

Honours and Appointments

Miss LORNA ELIZABETH FIELDING, assistant solicitor to Guildford Borough Council, has been appointed Deputy Clerk of Dorking Urban District Council.

Mr. SIDNEY JOHN FRANCIS, senior assistant solicitor to Eastbourne Corporation, has been appointed Deputy Town Clerk of Margate.

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Harrow.—E. BECKETT, F.A.I., Surveyor, Chartered Auctioneer and Estate Agent, 7 College Road, Harrow. Tel. Harrow 5216. And at Sudbury, Wembley, North Harrow and Moor Park, Northwood.

(*Continued on p. xv*)

REVIEWS

Gatley on Libel and Slander. The Common Law Library, No. 8. Fifth Edition. By RICHARD O'SULLIVAN, Q.C., and ROBERT L. MCEWEN, of the Inner Temple, Barrister-at-Law. With a Foreword by the Rt. Hon. Sir PATRICK DEVLIN. pp. cxiv and (with Index) 820. 1960. London: Sweet & Maxwell, Ltd. £7 7s. net.

The importance of the law and practice relating to libel and slander need not be emphasised and there are few, if any, books which cover every aspect of these subjects as clearly and fully as the work under review. Judicial decisions are of great significance in this branch of the law, and readers of "Gatley" have the advantage of being referred not only to the relevant decisions of the English courts, but also to those of courts in other parts of the common-law world.

Since the publication of the last edition, the law of defamation has been little affected by English statute law, but there have been several important decisions, such as *Cadam* v. *Beaverbrook Newspapers, Ltd.* [1959] 1 Q.B. 413, and *Webb* v. *The Times Publishing Co., Ltd.* [1960] 3 W.L.R. 352, which have been considered in the relevant parts of this work. It is interesting to note than the learned editors appear to prefer the view that communications passing between a solicitor and his client on the subject upon which the client has retained the solicitor enjoy absolute privilege. There is, of course, a divergence of opinion on this point and one might have expected that the editors would also have referred to the decision of the Court of Appeal in *Groom* v. *Crocker* [1939] 1 K.B. 194, in this connection.

Two very useful appendices contain forms and precedents and the text of the relevant statutory provisions. In fact, the practitioner confronted with an action for libel or slander should find in this work all the information and guidance that he needs.

Ten Rillington Place: Christie and Evans. The first full story of an appalling miscarriage of justice. By LUDOVIC KENNEDY pp. 308. 1960. London: Victor Gollancz, Ltd. £1 1s. net.

That our stomachs are turned less by the ghastly crimes of Christie than by the judicial murder of Evans is not surprising: Christie shared the responsibility for his pathetic victims only very indirectly with society, but the death of Evans weighs heavily and inescapably upon our common conscience. Even if Evans had been assuredly guilty it would be nauseating enough to know that this man with the brain of a ten-year-old child had been strangled in cold blood in our name; with the almost certain knowledge that he was innocent, the thought is unbearable. In 1948 Lord Kilmuir said that there was no practical possibility of an innocent man being hanged in this country, and that anyone who thought there was was living in the realms of fantasy. A lot more people are moving in the realms of fantasy since Christie, the chief prosecution witness at Evans' trial, was himself revealed a strangler, and after the publication of Mr. Kennedy's book those realms are going to be distinctly overcrowded. Mr. Michael Eddowes has already made a powerful plea for the clearing of Evans' name in "The Man on Your Conscience"; this book, written seven years after Christie's conviction, is even more persuasive, partly because of the author's approach to the subject and partly owing to the striking new facts which he has been able to bring out.

Mr. Kennedy, a passionate believer in Evans' innocence, has set out to stir up a public demand for a furthur inquiry into the happenings at 10 Rillington Place, by putting forward a careful and reasoned analysis of all the evidence available at the present time. Although he is possessed by a cold fury at the thought of this miscarriage of English justice, he does not allow his emotions to overbalance his argument, and he is scrupulously fair even to those whose conduct helped, by carelessness or obtuseness, to bring Evans to the gallows (he admits that Evans' own conduct went a long way to convicting him). The method he has adopted makes his book compellingly readable: he follows the stories of both Christie and Evans from birth to the gallows, dwelling in detail on the events of November, 1949, and on the two trials, and rounding off with the notorious Scott Henderson report. One of the most significant new pieces of evidence—one which now makes Christie's guilt of the murder of Mrs. Evans beyond any reasonable doubt—is the observation in Mr. Malcolm Morris's brief for the defence at the Evans trial to the effect that Dr. Teare had found evidence of sexual penetration of Mrs. Evans after death: this brief was available to Mr. Scott Henderson, but his report never mentions this crucial fact, although he refers to observations only a few lines higher up in the brief. On re-reading this report after some years, it seems incredible that it was ever accepted by the Government, unless they were determined to maintain the guilt of Evans at any cost; even with the knowledge that Christie was a multiple murderer, a confessed necrophiliac and a confirmed liar, over and over again Mr. Scott Henderson accepts Christie's evidence as proof of Evans' guilt, and brushes aside any fact which might assist in establishing Evans' innocence.

Mr. Kennedy is right in re-opening this sordid and horrible case, and he has done it with such skill that it will be read for its own sake, as a gripping story and a fascinating study of character. But its more serious purpose is never forgotten. Everybody connected with the case—doctors, counsel, police officers and relations—has been interviewed by the author, and he has distilled from these interviews an atmosphere which is overpoweringly authentic. The publishers hope that this book will make it impossible for anyone to believe that Evans was guilty, and that it will persuade the Government to hand over his remains to his family at last so that he may be buried in consecrated ground. It is his mother's dearest wish that he should have a Catholic burial. In his "Open Letter to the Home Secretary" with which the book opens, the author asks Mr. Butler to find time to read the book and then to answer the question: "Can you put your hand on your heart and say with Mr. Scott Henderson that *there can be no doubt* that Evans murdered his wife and child?" We shall probably never know the Home Secretary's answer—unless he is moved to appoint an inquiry more judicial and less hasty than that of Mr. Scott Henderson—but it is unlikely that the answer of most readers will be in doubt. And if they answer "No," then what of Lord Kilmuir's confident dictum, and what of the case for capital punishment?

The Annual Practice 1961. By A. S. DIAMOND, LL.D., Master of the Supreme Court, Queen's Bench Division, I. H. JACOB, LL.B., Master of the Supreme Court, Queen's Bench Division, PAUL ADAMS, T.D., Chief Master of the Supreme Court Taxing Office, and J. S. NEAVE, LL.B., Master of the Supreme Court, Chancery Division, assisted by W. H. REDMAN, M.B.E., Masters' Secretary. pp. ccxxxvii, 3821 and (Index) 304. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.; Butterworth & Co. (Publishers), Ltd. Two volumes, £6 6s. net.

More new rules and statutes affecting procedure have been passed since the last edition of the Annual Practice than for many years, and this edition (two volumes this year) has had to take into account, *inter alia*, the Rules of the Supreme Court (No. 3), 1959, the Supreme Court Costs Rules, 1959, the Rules of the Supreme Court (No. 1), 1960, the Legal Aid (General) Regulations, 1960, the Legal Advice Regulations, 1959, the Adoption (High Court) Rules, 1959, the Solicitors' Accounts (Amendment) Rules, 1959, the Solicitors' Remuneration Order, 1959, the Solicitors' Remuneration (Registered Land) Order, 1959, the County Courts Act, 1959, and the Supreme Court of Judicature (Amendment) Act, 1959.

Rules and statutes passed too late to appear in this edition include the Rules of the Supreme Court (Nos. 2 to 5), 1960, the Court of Protection Rules, 1960, the Mental Health Review Tribunal Rules, 1960, the Legal Aid Act, 1960, the Legal Aid (General) (Amendment) Regulations, 1960, the Legal Advice (Amendment) Regulations, 1960, and the Adoption Act, 1960.

Recent important Practice Directions which would otherwise have escaped inclusion appear in addenda, together with the Supreme Court Funds (No. 2) Rules, 1960.

The English and Indian Law of Torts. Eighteenth Edition. By DHIRAJLAL KESHAVLAL THAKORE, B.A., of Lincoln's Inn, Barrister-at-Law, and MANHARLAL RATANLAL VAKIL, B.A., LL.B., Barrister-at-Law. pp. lxxvii and (with Index) 595. 1960. Bombay: The Bombay Law Reporter Office. Rs. 9 net.

This work seeks to provide "a lucid exposition and a methodical arrangement both of the principles of the English ocmmon law and of the Indian case-law." While we found this

a very useful book, we noticed several points which suggest that it must be used with caution.

For example, in relation to the capacity of a convict to sue for tort, the authors appear to have overlooked the effect of the Criminal Justice Act, 1948, upon the disabling provisions of the Forfeiture Act, 1870, and in considering the liability of drunkards they state: "Drunkenness is no excuse for the commission of a crime; it will hardly therefore excuse a tort." It may well be that this statement is too wide: cf. *Director of Public Prosecutions* v. *Beard* [1920] A.C. 479. Again, it is said that an infant cannot maintain an action for injuries sustained while *en ventre sa mère*, but there are many who would deny that this must be accepted as a principle of English common law: cf. *Montreal Tramways Co.* v. *Leveille* (1933), S.C.R. 456.

Students will welcome the summary of the text and the questions which are to be found at the end of the book.

The Accountant, the Taxpayer, and the Revenue. Second (Revised) Edition. Edited by A. W. HOPKINS, F.A.C.C.A. A Handbook of Professional Practice. pp. 54. 1960. St. Albans: The Fiscal Press Ltd. 17s. 6d. net.

As its title suggests, this slender booklet is intended to be a practical guide for the accountant round all the pitfalls inherent in the conduct of his client's battles to preserve income more or less intact from the ravages of the Revenue. As such it succeeds: it is practical, it has examples, it is sufficient.

However, two points of criticism, both as to basic attitudes, may be mentioned. First, it is stated (p. 4) that "obvious advantages" arise from permitting a non-legal person to act for a taxpayer, and that when such a person is a professional accountant, "there should be even greater advantages." Nowhere is it suggested that professional legal advice could be of any assistance. Though this attitude may arise from our past faults, surely to-day accountants at least ought to recognise it as false. Second, a number of judicial opinions are cited (on p. 10) in favour, as it were, of tax avoidance, but none against. Thus the picture is incomplete. Cannot accountants be allowed to view both sides of the moral argument? Reference might perhaps have been made to the observations of Viscount Simon, L.C., in *Latilla* v. *Inland Revenue Commissioners* [1943] A.C. 377, at p. 381, expressing disapproval not only of the taxpayer who indulges in tax avoidance schemes, but also of his professional advisers.

BOOKS RECEIVED

Poems by a Quasi-Rebel. By THOMAS E. B. ADDERLEY. pp. 69. 1960. London: The Mitre Press (Fudge & Co. Ltd.). 8s. 6d. net.

Encyclopedia of the Law of Compulsory Purchase and Compensation. Release No. 3, 21st November, 1960. London: Sweet & Maxwell, Ltd. Service issue.

Hotels and Restaurants in Great Britain and Ireland, 1961. Thirty-third Edition. pp. xvi, 512 and maps. 1961. London: British Hotels and Restaurants Association. 4s. 6d. post free.

The Charities Act, 1960, with Annotations. By SPENCER G. MAURICE, of Lincoln's Inn, Barrister-at-Law. pp. xxii and (with Index) 132. 1960. London: Sweet & Maxwell, Ltd. £1 5s. net.

Documents on the St. Lawrence Seaway. A Selection of Documents edited by R. R. BAXTER. Published under the auspices of the British Institute of International and Comparative Law. pp. vi and 85. 1961. London: Stevens & Sons, Ltd. Bound: 15s. net. Wrapped: 10s. net.

An Introduction to the Law and Practice of Betting and Bookmaking. By J. T. CHENERY, D.P.A. (Lond.), Solicitor. pp. xvi and (with Index) 268. 1961. London: Sweet & Maxwell, Ltd. £1 15s. net.

Outlines of South African Criminal Law and Procedure. Second Edition. By ALFRED V. LANSDOWN, B.A., LL.B., Advocate of the Supreme Court of South Africa, Senior Law Lecturer, University of the Witwatersrand. pp. xxiv and (with Index) 400. 1960. South Africa: Juta and Co., Ltd. London: Sweet & Maxwell, Ltd. £4 6s. net.

"THE SOLICITORS' JOURNAL," 19th JANUARY, 1861

ON the 19th January, 1861, the SOLICITORS' JOURNAL reported the case of *Goodman* v. *Arden*, tried by Mr. Justice Byles in the Common Pleas on 14th January: "The plaintiff, a house agent, sought . . . to recover commission on the letting of a house and the sale of furniture in Lancaster Terrace, Regent's Park . . . The defendant was willing to pay the plaintiff's commission for the letting of the house, but not his claim in respect of the sale of the furniture, with which, he said, the plaintiff had nothing to do. Mr. Collier, in his address to the jury for the defendant, observed that if house agents were entitled to charge after the rate claimed by the plaintiff, he (Mr. Collier) and many other gentlemen would do well to adopt that profession. Mr. Serjeant Shee, in his reply, drew a ludicrous picture of the career of a barrister as contrasted with that of a house agent. 'Most of us,' said he, '—at all events I did—begin by taking a small room in the Temple and half a clerk. As I got on I was advanced to the dignity of a whole boy—a very small one—whom his mother kindly permitted to attend on me for a very small salary. Eventually, it is true, I incurred greater expense as I gained more fees; but a house agent has to begin with an expensive establishment, and the difference between his business and that of a barrister is too manifest to admit of argument.' The learned judge having summed up, the jury found a verdict for the plaintiff."

LORDS WITHOUT IRISH PEERS

LORD KILMOREY, the last of the twenty-eight Irish representative peers entitled to sit in the House of Lords, has died at the age of 77. There has been no election to the ranks of Irish representative peers since the setting up of the Irish Free State.

Wills and Bequests

Mr. ALFRED BEESLY, retired solicitor and farmer, of Letcombe Regis, Berkshire, who practised in London, W.C.1, left £189,350.

Personal Notes

Mr. EDWARD LLEWELLYN ST. JOHN COUCH, solicitor, of Taunton, has been presented with a record player by the villagers of Bicknoller, Somerset, where he is chairman of the parish council and of the British Legion and a diocesan reader.

Messrs. HALL, PRATT AND PRITCHARD, solicitors, of Bilston, Staffordshire, were publicly congratulated at Bilston Magistrates' Court on 6th January on the completion of 100 years' service to the court. Partners from the firm have been magistrates' clerks there since 1861.

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Hendon and Colindale.—HOWARD & MANNING (G. E. Manning, F.A.L.P.A., F.V.I.), Auctioneers, Surveyors and Valuers, 218 The Broadway, West Hendon, N.W.9. Tel. Hendon 7686/8, and at Northwood Hills, Middx. Tel. Northwood 2215/6.

Hendon.—DOUGLAS MARTIN & PARTNERS, LTD. —Douglas Martin, F.A.L.P.A., F.V.A.; Bernard Roach, F.A.L.P.A.; Jeffrey Lorenz, F.V.A.; John Sanders, F.V.A.; Alan Pritchard, A.V.A., Auctioneers, Surveyors, etc., Hendon Central Tube Station, N.W.4. Tel. HEN 6333.

Hendon.—M. E. NEAL & SON, 102 Brent Street, N.W.4. Tel. Hendon 6123. Established 1919.

Ilford.—RANDALLS, Chartered Surveyors and Auctioneers (established 1884), 67 Cranbrook Road. Tel. VALentine 6272 (10 lines).

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Leyton and Leytonstone.—R. CHEKE & CO., 252 High Road, E.10. Tel. Leytonstone 7733/4.

Leytonstone.—COMPTON GUY, Est. 1899, Auctioneers, Surveyors and Valuers, 55 Harrington Road. Tel. Ley 1123. And at 1 Cambridge Park, Wanstead. Tel. Wan 5148; 13 The Broadway, Woodford Green, Tel. Buc 0464.

Leytonstone.—PETTY, SON & PRESTWICH, F.A.I., Chartered Auctioneers and Estate Agents, 682 High Road, Leytonstone, E.11. Tel. LEY 1194/5, and at Wanstead and South Woodford.

Mill Hill.—COSWAY ESTATE OFFICES, 135/7 The Broadway, N.W.7. Tel. Mill Hill 2422/3422/2204.

Norbury.—DOUGLAS GRAHAM & CO., Estate Agents, Property Managers, 1364 London Road, S.W.16. Tel. POL 1313/1690. And at Thornton Heath, Sutton and Piccadilly, W.1.

Putney.—QUINTON & CO., F.A.I., Surveyors, Chartered Auctioneers and Estate Agents, 153 Upper Richmond Road, S.W.15. Tel. Putney 6249/6617.

South Norwood.—R. L. COURCIER, Estate Agent, Surveyor, Valuer, 4 and 6 Station Road, S.E.25. Tel. LIVingstone 3737.

Stanmore.—GLOVER of STANMORE, F.V.I., The Broadway (and at Station). Grimsdyke 2241 (5 lines).

Tottenham.—HILLYER & HILLYER (A. Murphy, F.A.I., F.V.A.), Auctioneers, Surveyors, Valuers and Estate Managers, 270/2 West Green Road, N.15. Tel. BOW 3464 (3 lines).

Walthamstow and Chingford.—EDWARD CULFF & CO., F.A.L.P.A., Auctioneers and Surveyors and Estate Agents, 92 St. Mary Road, Walthamstow, E.17. Tel. COPpermill 3391. Specialists in Property Management.

Wandsworth (Borough of), Battersea and S.W. Area.—MORETON RICHES, Surveyor, Auctioneer and Valuer, House and Estate Agent, 92 East Hill, Wandsworth, S.W.18. Tel. VANdyke 4166/4167.

Wood Green.—WOOD & LOACH, Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 723 Lordship Lane, N.22 (adjacent Eastern National Bus Station, close to Wood Green Tube Station). Tel. Bowes Park 1632.

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Bedford.—J. R. EVE & SON, 40 Mill Street, Chartered Surveyors, Land Agents, Auctioneers and Valuers. Tel. 67301/2.

Bedford.—ROBINSON & HALL, 15A St. Paul's Square, Chartered Surveyors. Tel. 2201/2/3.

Luton.—RICHARDSON & STILLMAN, Chartered Auctioneers and Estate Agents, 30 Alma Street, Tel. Luton 6492/3.

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Bracknell.—HUNTON & SON. Est. 1870. Auctioneers and Estate Agents, Valuers. Tel. 23.

County of Berkshire.—TUFNELL & PARTNERS, Auctioneers, Valuers and Surveyors, Sunninghill (Ascot 1666), Windsor (Windsor 1) and Streatley (Goring 45).

Didcot and District.—E. P. MESSENGER & SON, Chartered Auctioneers and Estate Agents, etc., The Broadway. Tel. Didcot 2079.

Faringdon.—HOBBS & CHAMBERS, Chartered Surveyors, Chartered Auctioneers and Estate Agents. Tel. Faringdon 2113.

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Newbury.—DREWEATT, WATSON & BARTON. Est. 1759. Chartered Auctioneers, Estate Agents and Valuers, Market Place. Tel. 1.

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Newbury and Hungerford.—A. W. NEATE & SONS. Est. 1876. Agricultural Valuers, Auctioneers, House and Estate Agents. Tel. Newbury 304 and 1620. Hungerford 8.

Reading.—HASLAM & SON, Chartered Surveyors and Valuers, Friar Street, Chambers. Tel. 54271/2.

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Amersham, Chesham and Great Missenden.—HOWARD, SON & GOOCH, Auctioneers, Surveyors, and Estate Agents, Oakfield Corner, Amersham (Tel. 1430), and at Chesham 8097 and Great Missenden 2194.

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Farnham Common.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, The Broadway. Tel. 109.

High Wycombe.—HAMNETT, RAFFETY & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 30 High Street. Tel. 2576/7/8/9.

High Wycombe.—HUNT & NASH, F.R.I.C.S., F.A.I., Chartered Surveyors, 15 Crendon Street. Tel. 884.

High Wycombe and South Bucks.—H. MORCOM JONES & CO., F.A.I., Chartered Auctioneers, 86 Easton Street. Tel. 1404/5.

North Bucks.—WOODHOUSE NEALE, SONS & CO., Estate Agents and Valuers, Estate Offices, Bletchley. Tel. 2201/2.

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Slough.—BUCKLAND & SONS, 26 Mackenzie St. Tel. 21307. Also at Windsor, Reading and London, W.C.1.

Slough.—HOUSEMANS, Estate and Property Managers, Surveyors, Valuers, House, Land and Estate Agents. Mortgage and Insurance Brokers, 46 Windsor Road. Tel. 25496. Also at Ashford, Middlesex.

Slough and Gerrards Cross.—GIDDY & GIDDY. Tel. Nos. Slough 23379, Gerrards Cross 3987.

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Redruth.—A. PEARSE JENKIN & PARTNERS. Est. 1760. Auctioneers, Surveyors and Valuers, Alma Place.

(*Continued on p. xvi*)

CORNWALL (*continued*)

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NOTES OF CASES

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House of Lords

PROFITS TAX: COLLIERY AFTER NATIONALISATION: NOT FUNCTIONING AS PROPERTY-HOLDING COMPANY

Henry Briggs, Son & Co., Ltd. *v.* Inland Revenue Commissioners

Lord Reid, Lord Tucker, Lord Morris of Borth-y-Gest and Lord Hodson. 21st December, 1960

Appeal from the Court of Appeal ([1960] 1 W.L.R. 532; 104 SOL. J. 386).

After the nationalisation of the coal industry in 1946, Briggs Collieries, Ltd., formerly a colliery company, a subsidiary of the appellant company, Henry Briggs, Son & Co., Ltd., decided to remain in being for the purpose of receiving the compensation provided by the nationalisation Act, but not to embark on any trade or other activity. The compensation was finally paid in 1955 but in the meantime the company received certain interim payments and paid dividends to the parent company. The parent company appealed against assessments to profits tax on the ground that the dividends received from the subsidiary had been included in the computation of the profits. It was submitted that they ought to have been excluded because the subsidiary company was to be deemed for the purposes of s. 19 (4) of the Finance Act, 1937, to be carrying on the business of holding property, that is, the right to receive the compensation, and so the dividends were franked investment income as defined by para. 7 (1A) of Sched. IV. The Special Commissioners, and Upjohn, J., on appeal, decided against the parent company, who appealed unsuccessfully to the Court of Appeal and now appealed to the House of Lords. By s. 19 (4) of the Finance Act, 1937: "Where the functions of a company . . . consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this section to be a business carried on by the company . . .".

LORD REID said that the appellants' contention was that the dividends which they received from Briggs Collieries, Ltd., were franked investment income and ought for that reason to have been excluded from the computation of their profits. If s. 19 (4) of the Finance Act, 1937, applied to that company, the dividends were franked investment income. If its provisions could be considered in isolation, it might apply to the company. The right to compensation was property held by the company and if the word "functions" had its ordinary wide and vague meaning, it was a function of the company to hold the property till the compensation was received. But if the words "holding" and "functions" were given such wide meanings in this context, the result would be that whenever any company ceased to carry on its ordinary business, but did not at once start a new business or go into liquidation, s. 19 (4) would apply to it. But such a result could not be reconciled with other provisions of the Act. It was necessary, therefore, to see whether more limited meanings could not be given to those words in the context. As the Act only set out to tax profits from trades or businesses, one might expect that any extension of its scope by a deeming provision would only apply to companies conducting something analogous to a trade or business with the object of making profits. In this context "the holding of investments or other property" did not mean simply owning them. "Holding" often involved the idea of retention permanently or for an indefinite time and that was involved in the use of the word here. There was an essential distinction between companies whose function or purpose or objective was to make profit by continuing to hold their assets in the form of investments or property, and companies which were not trying to make profitable use of their assets, but whose whole activities were directed to realising their assets as soon as possible. In the latter case the function or purpose or objective of the company was not to continue to hold investments or property, but to cease holding its assets in that form as soon as they could be turned into money. If this company had any functions after the vesting date, those functions consisted in collecting the money due to it and not in the holding of property. The subsection was not wide enough to apply to the company after the vesting date. The appeal should be dismissed.

The other noble and learned lords agreed in dismissing the appeal. Appeal dismissed.

APPEARANCES: *Sir John Senter*, Q.C., *D. Miller* and *N. Elles* (*Thicknesse & Hull*); *J. Foster*, Q.C., and *Allan Orr* (*Solicitor of Inland Revenue*).

[Reported by F. H. COWEN, Esq., Barrister-at-Law] [1 W.L.R. 68

Court of Appeal

LEASE: ESCROW: LEASE EXECUTED BY LANDLORD COMPANY: DELIVERY

Beesly *v.* Hallwood Estates, Ltd.

Lord Evershed, M.R., Harman and Donovan, L.JJ. 17th November, 1960

Appeal from Buckley, J. ([1960] 1 W.L.R. 649; 104 SOL. J. 407).

By a lease dated 21st May, 1938, for a term of twenty-one years from 25th March, 1938, it was provided that, on the tenants giving at least six months' notice in writing previous to the determination of the lease, they should have the right to obtain a further lease for twenty-one years on the same conditions subject to certain amendments. The option was never registered as a land charge under the Land Charges Act, 1925. On 10th January, 1948, the residue of the term was assigned to the plaintiff for valuable consideration; and, in August, 1955, the freehold reversion was purchased by the defendant company for money. On 1st July, 1958, the plaintiff gave notice exercising the option. Both the plaintiff and the directors of the defendant company were then of opinion that the option was binding on the defendant company. On 27th August, 1958, the defendant company's solicitors wrote to the plaintiff's solicitors setting out the terms of the new lease and informing them that the grant of the new lease would be subject to an undertaking being given to redecorate the property. There was some further correspondence with regard to the terms of the undertaking but it was never given. On 11th September, 1958, the defendant company's solicitors sent a counterpart lease to the plaintiff's solicitors for execution by the plaintiff. At some date between 13th and 26th September, 1958, the seal of the defendant company was attached to the new lease; on 24th or 25th September, 1958, the plaintiff executed the counterpart lease. At a board meeting of the defendant company held on 26th September, 1958, it was reported that a new lease had been executed, when one of the directors suggested that the position as to the registration of the option should be investigated. The defendant company were advised that the option was void for lack of registration, and on 8th October, 1958, a letter was written to the plaintiff's solicitors informing them that the defendant company had decided not to grant the new lease. In an action in which the plaintiff claimed, *inter*

alia, that the defendants were bound by the lease sealed by them, Buckley, J., held that the sealing of the lease by the defendant company imported delivery and they were bound by that lease subject to the plaintiff handing over the counterpart which she had executed. The defendants appealed on the ground, *inter alia*, that, the lease not having been exchanged with any counterpart, the defendant company were free to countermand the delivery of the alleged lease to the plaintiff and to refuse to be bound by it. It was not disputed by the defendants that the sealing of the lease imported delivery.

HARMAN, L.J., delivering the first judgment, said that the substantial plea was this, that as by 8th October there had been no performance of the condition as to exchange in that the counterpart had not been returned, the defendant company were entitled to withdraw from what was, in effect, an offer made subject to a condition not then accepted and, therefore, retractable at will by the offeror. If that were the true nature of a document delivered in escrow that result might follow. The question, then, was: what was an escrow? Could a body or an individual, having executed a document under seal as an escrow subject to a condition, resile before the condition was accepted? That, really, was the point now taken and it was a very narrow one. Of course, if there had been no delivery, as was pleaded, the matter would be wholly different; but that, by the time the action came to the Court of Appeal, had been decided as a fact by the judge and accepted by the defendants. An escrow, then, was a type of deed which, perhaps, was best described in Norton upon Deeds, p. 15 (author's edition): "If an instrument be delivered to take effect on the happening of a specified event or upon condition that it is not to be operative until some condition is performed, then pending the happening of the event or the performance of the condition the instrument is called an escrow. The maker (of that deed) may so deliver it as to suspend or qualify its binding effect. He may declare that it shall have no effect until a certain time has arrived or until some condition has been performed, but when the time has arrived or the condition has been performed the delivery becomes absolute and the maker of the deed is absolutely bound by it whether he has parted with the possession or not. Until the specified time has arrived or the condition has been performed the instrument is not a deed, it is a mere escrow"—that was a quotation from Lord Cranworth's speech in the leading case of *Xenos* v. *Wickham* (1866), L.R. 2 H.L. 296, at p. 323. In Norton, p. 17, there was a further relevant statement: "Whether the document was delivered as an escrow or as a deed is a question of what the parties intended, and that intention may appear either from their statements or the circumstances"—that is to say, the question was one of fact, and it had been so decided in the present case. In *Foundling Hospital Governors* v. *Crane* [1911] 2 K.B. 367, at p. 379, Farwell, L.J., said: "Was the deed, then, delivered as an escrow or was there no delivery at all? I doubt if a man by executing a deed and handing it over to his own solicitors to be held on his behalf until he gives them further instructions makes a delivery of it as an escrow at all. I doubt also if a deed can be delivered as an escrow at all subject to an overriding power in the grantor to recall the deed altogether." In other words, if you did deliver a document as an escrow it was your act and deed and was not recallable by you. If, of course, the condition were never performed it never became binding, and there must come a time, if there were unreasonable delay in the performance of the condition, when, at the present day at any rate where equitable principles governed the actions of the court, the person or firm that had executed the escrow would be released from its obligation. But in the present case there was no refusal on the part of the plaintiff to exchange the counterpart. It was quite clear that that was the condition, although some attempt was made to argue that no condition was attached. In his (his lordship's) opinion, however, where it was the common intention of the parties—as, indeed, was almost universal at the present day—to proceed by means of lease and counterpart, it was readily to be inferred that delivery of the counterpart was a condition of the escrow. But nobody here on the defendant company's part called on the plaintiff to deliver her counterpart. There was no unreasonable withholding of it or delay. It was merely that the company, having second thoughts or, perhaps, shrewder advice, determined to attempt to get out of what was for them in the event binding. In his judgment, that was exactly what they could not do. An escrow was no less a man's act and deed because there was a condition outstanding than was a perfectly completed deed handed over, and, therefore, the company were at least bound to wait a reasonable time before attempting to resile from their position. The appeal failed and ought to be dismissed.

LORD EVERSHED, M.R., and DONOVAN, L.J., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *Nigel Warren*, Q.C., and *A. E. Holdsworth* (*George C. Carter & Co.*); *Sir Lynn Ungoed-Thomas*, Q.C., and *F. Bower Alcock* (*S. Sidney Silverman*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 36

INCOME TAX: GIFT FROM EMPLOYER OF NEW SUIT OF CLOTHES

Wilkins (Inspector of Taxes) *v.* Rogerson

Lord Evershed, M.R., Harman and Donovan, L.JJ.

13th December, 1960

Appeal from Danckwerts, J. ([1960] Ch. 437; 104 SOL. J. 288).

In 1955, the directors of a company decided to give to each of their employees a suit, overcoat or raincoat made by a named tailor as a Christmas present. They requested the tailor to give each employee a fitting and requested each employee to call at a branch of the tailor and order a suit, overcoat or raincoat as he chose, up to the value of £15. The bills were to be sent to the company. The taxpayer, one of the employees, called at a branch of the tailor, ordered a suit, and in due course received it. His suit cost £14 15s., which sum the company paid. A sum of £14 15s. in respect of the suit was included in an assessment made on the employee under Sched. E of the Income Tax Act, 1952, for the year 1955–56, as part of the "perquisites or profits" arising from his employment. The taxpayer appealed to the special commissioners, who held that the amount to be included was not £14 15s., but the value of the suit in his hands, on the footing that he could immediately have sold it only as second-hand, which value was agreed at £5. Danckwerts, J., affirmed the special commissioners' decision. The Crown appealed.

LORD EVERSHED, M.R., said that the point in the appeal fell within the narrowest compass; but it appeared to be novel in the sense that no strictly comparable case seemed to have come before the court previously. The Crown's case was that where the employee accepted an offer from his employer to spend money on his behalf, then the employee was chargeable on the money spent, and not on the value of the thing bought for him. The point was a very short one and did not lend itself to elaboration. He (his lordship) rejected the premise involved in the formulation of the Crown's argument. It was no doubt true in a sense that the letter sent to the taxpayer by his employers was an offer, and one which the person to whom it was addressed was not bound to accept. But in the Crown's submission the word "offer" was used in a sense in which it would be used in a legal context. The suggestion was that here was an offer which, on acceptance, created some right; and it was at that point that he (his lordship) parted company with that argument. In his judgment the taxpayer never acquired

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(*continued on p. xix*)

any rights either against his employers or against the tailor supplying the suit, and this was not a case where the taxpayer was entitled to call on his employers to pay a sum of money on his behalf. Until the taxpayer received his suit, he got nothing, and when he received it, the thing he received expressed in money's worth was the value of the suit, and it was on that value that he was taxable under Sched. E. Accordingly, cases such as *Nicholl* v. *Austin* (1935), 19 T.C. 531, and *Hartland* v. *Diggines* [1926] A.C. 289, were distinguishable. He would therefore dismiss the appeal.

HARMAN and DONOVAN, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *Hilary Magnus*, Q.C., *E. Blanshard Stamp* and *Alan S. Orr* (*Solicitor of Inland Revenue*); *F. Heyworth Talbot*, Q.C., and *C. N. Beattie* (*Slaughter & May*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law]

NULLITY SUIT: MARRIAGE CELEBRATED IN ENGLAND: HUSBAND DOMICILED AND RESIDENT IN SCOTLAND

Ross Smith (otherwise Radford) *v.* Ross Smith

Ormerod, Willmer and Upjohn, L.JJ.

20th December, 1960

Appeal from Karminski, J. ([1960] 3 W.L.R. 753; 104 SOL. J. 870).

A wife petitioned for a decree of nullity on the ground of the husband's incapacity or, alternatively, his wilful refusal to consummate the marriage. The marriage had been celebrated in England. At the time of the institution of the suit, the wife was resident in England, but the husband was not, and was at all material times domiciled in Scotland. On an issue as to whether the court had jurisdiction to hear the suit, Karminski, J., held that the court did not have jurisdiction. The wife appealed.

WILLMER, L.J., reading the judgment of the court, said that this court in *Ramsay-Fairfax* v. *Ramsay-Fairfax* [1956] P. 115, decided that jurisdiction to pronounce a decree of nullity existed where the parties were resident, although not domiciled in England, and that for that purpose no distinction was to be drawn between marriages which were void *ab initio* and those which were merely voidable. The further question raised by the present appeal was whether jurisdiction existed in a case where the parties were not domiciled and the respondent was not resident in England, on the ground that the marriage was celebrated in England. Karminski, J., reached the conclusion that he had no jurisdiction to entertain the suit because he held himself bound by *Casey* v. *Casey* [1949] P. 420. That was a decision of the Court of Appeal binding on the court unless it could be shown that its *ratio decidendi* was so inconsistent with other authority by which the court were bound that they were free to consider the matter afresh and decide which of the conflicting decisions they ought to follow. The court had come to the conclusion that the majority decision in *Casey* v. *Casey* could not stand with the unanimous decision in *Ramsay-Fairfax* v. *Ramsay-Fairfax*. In the latter, as the court understood it, it was decided once and for all that no distinction was to be drawn, for jurisdictional purposes, between marriages which were void *ab initio* and those which were merely voidable. If that was correct, the decision in that case was clearly in conflict with the *ratio* of the majority in *Casey* v. *Casey*. This court entertained no doubt that the decision in *Ramsay-Fairfax* v. *Ramsay-Fairfax* was to be preferred and should be followed. In reaching that conclusion the court were encouraged to find that it was supported by the weighty authority of Lord MacDermott in *Addison* v. *Addison* [1955] N.I. 1, and adopted the reasoning which led to him his conclusion in that case. In the court's judgment, the marriage in the present case having been celebrated in England, the High Court had jurisdiction to pronounce on its validity and, for the purpose of doing so, to inquire into both the grounds on which its validity was impugned. Appeal allowed.

APPEARANCES: *J. B. Latey*, Q.C., and *S. K. D. De Ferrars* (*Gibson & Weldon*, for *Frederick Gowen & Stevens*, Croydon); *F. Laskey* (*Kenneth Brown, Baker, Baker*).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] [2 W.L.R. 71

Chancery Division

INCOME TAX: EXPENSES: BANK MANAGER

Brown *v.* Bullock (Inspector of Taxes)

Danckwerts, J. 15th November, 1960

Case stated by the Commissioners for the General Purposes of the Income Tax for St. James, Westminster.

The managers of branches of a bank were instructed by the bank to foster local contacts and for that purpose to join a club or clubs, such membership being virtually a condition of managerial appointment. *B*, on his appointment as manager of a branch in June, 1949, was elected a member of the *D* club and his entrance fee and annual subscription of £21 were paid by the bank. He used the club to return hospitality received from customers and he lunched there fairly frequently to keep in touch with member customers, but he rarely used it for any other purpose. At the date of his appointment *B* was already a member of the *R* club, and by agreement with the bank he continued his membership, instead of applying for membership of another club, in order to enjoy some personal advantage from its country branch, and the bank agreed to pay one-half of the annual subscription of 12 guineas. The General Commissioners confirmed an assessment to income tax under Sched. E in the sum of £27 for the income tax year 1954–55 in respect of the subscriptions. *B* appealed, claiming that that sum was allowable as a deduction under r. 7 of Sched. IX to the Income Tax Act, 1952, as being money expended wholly, exclusively and necessarily in the performance of his duties.

DANCKWERTS, J., said that so far as the subscription to the *R* club was concerned, he found it impossible to say that it was a permissible deduction within the meaning of r. 7, because it was clear from the facts found by the Commissioners that the appellant was a member of that club, not really necessarily for the purposes, or only partly for the purposes, of his employment or office as a bank manager, but that his membership was originally and still was partly for the purposes of his private enjoyment, namely, the facilities provided by the country club. The payment by the bank of half of his subscription to that club was an arbitrary division and did not meet the point. When *B* visited the *D* club he was not really acting in the performance of his duties as manager of the bank; he was adding to his usefulness as a bank manager, so that this subscription was not a deductible expense within r. 7. The matter was concluded by the decision of Vaisey, J., in *Lomax* v. *Newton* [1953] 1 W.L.R. 1123. Accordingly, the appeal must be dismissed with regard to both subscriptions.

APPEARANCES: *H. H. Monroe*, Q.C., and *M. P. Nolan* (*Preston & Naylor*); *C. F. Fletcher-Cooke*, Q.C., and *Alan S. Orr* (*Solicitor, Inland Revenue*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law] [1 W.L.R. 53

Probate, Divorce and Admiralty Division

DIVORCE: COSTS AGAINST CO-RESPONDENT: NO EVIDENCE CO-RESPONDENT KNEW WIFE MARRIED

Jackson *v.* Jackson and Pavan

Phillimore, J. 10th October, 1960

Undefended petition for divorce.

At the hearing of a husband's undefended petition for divorce on the ground of adultery evidence was given that

the wife had given birth to a child of whom the husband could not have been the father. The entry purported to be signed by both parents; but while the signature of the mother on the original entry was identified in evidence as that of the wife, there was no evidence to identify the signature of the father as that of the co-respondent. The address given for both informants was the same. There was some evidence that the occupation given as that of the father, an hotel waiter, was also that of the co-respondent. While a man had been seen at the address given in the certificate that man had not been identified. There was no evidence in any case, apart from what might be inferred from the certificate, that the co-respondent, who had entered an appearance by solicitors but who did not defend the petition nor contest the prayer for costs, knew that the wife was a married woman.

PHILLIMORE, J., referring to *In re Stollery* [1926] Ch. 284, said that the court was entitled on the facts, and after taking into account the provisions of s. 10 of the Births and Deaths Registration Act, 1953, to find that the man who signed the register was the man for whom solicitors had entered an appearance. Dealing with the question of costs, his lordship, after considering *Langrick* v. *Langrick and Funnell* [1920] P. 90, said that the court had a complete discretion to make an order for costs against a co-respondent in a case where the co-respondent, even if he did not know that the wife was a married woman, ought to have known. Although in the present case there was no evidence, apart from the entry of birth, that the co-respondent knew the wife to be a married woman, that did not therefore prevent the court from making an order for costs; and in the circumstances it was appropriate that the co-respondent should be ordered to pay them. Decree nisi: costs against co-respondent.

APPEARANCES: *David Calcutt* (*Abbott, Baldwin and Co.*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[2 W.L.R. 58**

HUSBAND AND WIFE: APPLICATION FOR MAINTENANCE SEVERAL YEARS AFTER DIVORCE DECREE

Eaketts *v.* Eaketts

Marshall, J. 20th October, 1960

Summons by wife for maintenance.

The wife was granted a decree nisi of divorce, which was made absolute on 3rd September, 1946, upon the prayer of a petition filed in that year. She did not, however, apply for maintenance until March, 1959. The operative rules at the time of her decree were the Matrimonial Causes Rules, 1944. By r. 3 (2) it was provided that "every application for ancillary relief . . . except where a claim for [alimony pending suit] is made in the original petition . . . shall be by notice." The 1947 rules made provision in r. 4 for the inclusion of a prayer for maintenance in the petition, and this was repeated in the 1950 rules. In neither case, however, was the inclusion of such a prayer obligatory. Under the 1957 rules, however, it became obligatory under rr. 3 (3) and 4 (4) for a prayer for maintenance to be included in a petition, or in an answer where relief was claimed, subject to certain provisos, including a proviso (r. 3 (3) (ii)) that a judge might give leave for such applications to be made where they had not been included in the pleading. In *Pachner* v. *Parker* (*formerly Pachner*) [1960] 1 W.L.R. 486, the wife had presented her petition for divorce in 1949, at a time, therefore, when maintenance might have been prayed for in a petition. She was granted a decree absolute in 1949, but made no application for maintenance until 1959. Marshall, J., held that before she could proceed with her application she must obtain the leave of a judge under r. 3 (3), proviso (ii), for the 1957 rules were the only ones in operation at the time of her application. After certain adjournments the objection was taken before the registrar on behalf of the husband in the present case that the wife should first have obtained the leave of the judge before making her application, and the matter was referred to the judge in chambers.

MARSHALL, J., who gave judgment in chambers, but authorised the publication of a report of his decision, held that the proviso to r. 3 (3) was not applicable to the present case, for at the time when the petition was presented the rules then in force, namely, the 1944 rules, made no provision for a prayer for maintenance to be included in the petition, and such a claim could not have been contained in it. It was therefore unnecessary for the wife to obtain the leave of a judge before making her application.

APPEARANCES: *R. V. Cusack*, Q.C., and *R. L. C. Hartley* (*Langham & Letts*, for *Philip Baker & Co.*, Birmingham); *D. Armstead Fairweather* (*Watterson, Moore & Co.*, Cheltenham).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 66**

HUSBAND AND WIFE: JUSTICES' REASONS DRAWN UP BY COUNSEL FOR SUCCESSFUL PARTY

Johnson *v.* Johnson

Lord Merriman, P. and Cairns, J. 23rd November, 1960

Appeal from Dynas Powis justices sitting at Barry.

A husband appealed against the making of an order in favour of the wife on the ground of desertion. At the hearing it was disclosed to the court that the justices' reasons for their decision had, on the request of the clerk to the court, been drawn up by counsel for the wife and approved by the justices. The source of the draft reasons was unknown to the justices.

LORD MERRIMAN, P., said that the question was whether it was possible to justify the clerk to the court inviting counsel who had appeared for the winning party to draw up, or even to assist him in drawing up, the reasons for the justices' decision. It was impossible that the defeated husband, becoming aware of that, should feel anything but aggrieved, or, putting it more fully, feel anything but that the ground was cut from under his feet for the purposes of appeal before it started. The court had been told, on the responsibility of counsel, that there was no novelty in the practice so far as that particular petty sessional division was concerned. If that was so the sooner the practice stopped the better, and it must never be repeated. It was not known whether the practice extended beyond cases in which counsel appeared for the successful party. If the same sort of requests for assistance were made to the solicitor advocate everything so far said would also apply. The present case was one in which the rule that justice must not merely be done but that it must manifestly be seen to be done applied in strong measure. The court insisted and the Matrimonial Causes Rules, 1957, r. 73 (3), required that a note of the evidence with the reasons of the justices for their decision should be provided. The irregularity thus cut at the very root of the belief, which the husband would otherwise be entitled to hold, that he was really getting the words of the justices and not the words of his wife's advocate as the preliminary to the appeal. The practice must stop and if it went further, in the sense that solicitors were asked to do the same thing if no counsel appeared in the case, the same remarks applied. The order must be set aside and a rehearing by a fresh panel of the justices for the division ordered. It was impossible, in the circumstances, to allow the clerk concerned to sit on the new trial.

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LEGAL CLERK required, mainly for conveyancing. Salary scale £1,005–£1,185 p.a., inclusive. Applicants should be experienced and capable of working with only slight supervision. Generous help with removal expenses. Applications, with details of experience and names and addresses of two referees, to be sent to the undersigned, in envelopes endorsed "Legal Clerk," not later than 30th January, 1961.

E. J. COPE-BROWN,
Town Clerk.

Town Hall,
Ealing, W.5.

BOROUGH OF FINCHLEY
ASSISTANT SOLICITOR

Applications are invited for the above position at a salary within A.P.T. Grade either III or IV according to age and experience, plus London Weighting. The provisions of the Local Government Superannuation Acts will apply and medical examination will be required.

Candidates should have experience of conveyancing and be willing to undertake advocacy. Municipal experience will be an advantage though not essential.

Applications stating age, present appointment, full details of experience and giving names of two referees must reach the undersigned not later than 6th February, 1961.

R. M. FRANKLIN,
Town Clerk.

Municipal Offices,
Finchley, N.3.

NORTH EASTERN GAS BOARD
APPOINTMENT OF LEGAL ASSISTANT

Applications are invited for the above permanent pensionable appointment (Male or Female). Salary Scale with commencing point not less than £830 per annum according to experience. A sound, practical knowledge of conveyancing is essential.

Applications, stating age, education and experience, together with names and addresses of two referees, to reach the undersigned not later than 30th January, 1961.

J. C. GARDNER,
Secretary.

Bridge Street,
Leeds, 2.

KENT COUNTY COUNCIL

requires an ASSISTANT SOLICITOR for prosecutions, advocacy and general legal work. The salary grade will be fixed having regard to the age, experience and qualifications of the successful applicant, but will not exceed Grade A.P.T. V (£1,310–£1,480).

Applications, stating age, date of admission, particulars of present and any previous appointments and general experience and giving the names of two referees, to reach the Clerk of the Council, County Hall, Maidstone, not later than the 3rd February, 1961.

NEW SCOTLAND YARD

ASSISTANT PROSECUTING SOLICITORS on permanent staff of Solicitor's Department. Age 24–40. Salary on appointment £950 to £1,135 according to age. On confirmation £1,300 at age 30, rising to £1,850. Non-contributory pension. Candidates who have passed their final examination but have not yet been admitted will be considered. Particulars from Secretary, Room 165 (LA), New Scotland Yard, S.W.1.

FRIMLEY AND CAMBERLEY URBAN DISTRICT COUNCIL
APPOINTMENT OF ASSISTANT SOLICITOR

Applications are invited for the above appointment at a salary in accordance with A.P.T. V (£1,310–£1,480 per annum), the commencing salary being dependent upon ability and experience.

The appointment is superannuable and will be determinable by one month's notice.

An expansion scheme under the Town Development Act, 1952, is now in progress, the District is in process of large-scale development and the post affords an opportunity for the gaining of a wide and varied experience.

Housing accommodation will be made available if required.

Applications, endorsed "Assistant Solicitor," and giving details of age, experience and qualifications should be forwarded to the undersigned, together with the names and addresses of two referees by 3rd February, 1961.

K. S. HARVEY,
Clerk of the Council.

Municipal Buildings,
London Road,
Camberley.
9th January, 1961.

CITY OF SALFORD
ASSISTANT SOLICITOR

Assistant Solicitor required. Salary scale £1,310–£1,480. Commencing salary according to qualifications and experience.

Municipal experience desirable but not essential. Must be good advocate.

Applications, with names of two referees, to the undersigned by 28th January, 1961.

R. RIBBLESDALE THORNTON,
Town Clerk.

Town Hall,
Salford, 3.

MIDDLESEX COUNTY COUNCIL
CLERK'S DEPARTMENT

CONVEYANCING ASSISTANT, A.P.T. II (£815–£960), with up to £40 p.a. London Weighting. Commencing salary may depend on age and experience. Pensionable. Prescribed conditions. Five-day week. Applications with details of age, any examination successes and experience should reach the Clerk of the County Council (Ref. C), Middlesex Guildhall, Westminster, S.W.1, by 30th January. (Quote F. 288. S.J.)

FRIERN BARNET URBAN DISTRICT COUNCIL

Applications are invited for the following posts :—

DEPUTY CLERK. Salary £1,520–£1,670. Applicants must be Solicitors with Local Government experience.

LEGAL ASSISTANT (unadmitted). Salary Grade A.P.T. III £960–£1,140 plus London weighting. Thorough knowledge and experience of conveyancing required. Local Government experience not essential.

Applications stating age, qualifications and experience together with the names of two referees should reach the undersigned not later than 28th January, 1961.

R. S. CLOTHIER,
Clerk of the Council.

Town Hall,
Friern Barnet,
London, N.11.

APPOINTMENTS VACANT

YOUNG Barrister or Solicitor required as Personal Assistant to Chairman and Managing Director of expanding Public Company offering exceptional opportunities and high salary to applicant with qualifications which include conveyancing experience.—Write Box F200 c/o Streets, 110 Old Broad Street, E.C.2.

BRISTOL SOLICITORS invite applications for Assistant Solicitor in the Common Law Department. Previous experience in this type of work desirable but not essential. Post might suit newly admitted Solicitor. Advocacy essential. Please reply in writing, stating age, previous experience and salary required.—Box 7292, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

continued on p. xxi

CAIRNS, J., agreed.

APPEARANCES: *Hywel ap Robert* (*Cliftons*, for *D. C. Passmore, Walters & Co.*, Cardiff); *R. G. Waterhouse* (*Theodore Goddard & Co.*, for *Myer Cohen & Co.*, Cardiff).

[Reported by Miss ELAINE JONES, Barrister-at-Law] [1 W.L.R. 50

Court of Criminal Appeal

COURT OF CRIMINAL APPEAL: APPLICATIONS FOR LEAVE TO APPEAL TO HOUSE OF LORDS: PRACTICE

R. *v.* Daines; R. *v.* Williams

Lord Parker, C.J., Streatfeild and Ashworth, JJ.

12th December, 1960

Applications for leave to appeal to the House of Lords.

The applicants applied for leave to appeal to the House of Lords under s. 1 of the Administration of Justice Act, 1960, from the dismissal by the court, on 14th November, 1960, of their appeals against conviction.

LORD PARKER, C.J., said that the court had carefully considered the applications, had heard counsel for the applicants, and had come to the clear conclusion that no point of law of general public importance was involved in the decision of the court dismissing the appeals. On reading the papers, it had seemed a plain case, but, having regard to the fact that these were the first two applications under the Act of 1960, the court had thought it right to grant legal aid and have the matter argued. The court desired to say that, in future, in a case where there did not seem to be any point of law of general public importance, the court would deal with the matter on the papers without granting legal aid or leave to be present. Applications dismissed.

APPEARANCES: *J. J. Deave* (*Registrar, Court of Criminal Appeal*); *I. S. Hill* (*Kimbers*, for *F. C. Crawley*, Worksop).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [1 W.L.R. 5

Restrictive Practices Court

PRACTICE: UNDERTAKING NOT TO REINTRODUCE RESTRICTIONS: APPLICATION FOR RELEASE

***In re* Yarn Spinners' Agreement (No. 2)**

Pearson, J., Sir Stanford Cooper and Mr. W. L. Heywood

10th November, 1960

Application.

On the court declaring restrictions in their agreement contrary to the public interest, the members of a trade association gave an undertaking to the court not to bring into force the same or a similar agreement in the future without giving twenty-eight days' notice of their intention to the registrar, and, on that undertaking being given, no order was made on an application by the registrar for an injunction. Subsequently, the trade association wished to make a new recommendation that certain standard conditions of sale for the home trade be accepted by all the members, in respect of which the registrar was willing to make a representation to the Board of Trade under s. 12 (1) of the Restrictive Trade Practices Act, 1956. The association applied to the court for an order that they might be released from their undertaking to such an extent as was necessary to enable them to make that recommendation, but so that the recommendation should only be published to the general body of members if it was authorised for removal from the register by the Board of Trade under s. 12.

PEARSON, J., said that the court had considered the application and its view was that the course adopted by the parties in first applying to the court to be released from their undertaking to the necessary extent was a convenient and proper course. The application would be allowed. Order accordingly.

APPEARANCES: *Geoffrey Tompkin* (*John Taylor & Co.*, Manchester); *John Donaldson* (*Treasury Solicitor*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [1 W.L.R. 64

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Castle Bromwich–Dunston Special Road Scheme, 1960. (S.I. 1960 No. 2454.) 11d.

Chancery of Lancaster Rules, 1961. (S.I. 1961 No. 3.) 5d. See p. 66, *post*.

Chancery of Lancaster (Costs) Rules, 1961. (S.I. 1961 No. 4.) 11d. See p. 66, *post*.

County of Leicester (Electoral Divisions) Order, 1961. (S.I. 1961 No. 10.) 8d.

County of Northampton (Electoral Divisions) Order, 1960. (S.I. 1960 No. 2461.) 5d.

East of Snaith–York–Thirsk–Stockton-on-Tees–Sunderland Trunk Road (King's Arms Hotel, Billingham Diversion) Order, 1960. (S.I. 1960 No. 2470.) 5d.

Leeds Corporation (Ilton Reservoir) Water Order, 1960. (S.I. 1960 No. 2450.) 4d.

London Traffic (Prescribed Routes) (Hammersmith) (No. 2) Regulations, 1960. (S.I. 1960 No. 2455.) 4d.

London Traffic (Prohibition of Cycling in Pedestrian Subways) (Brentford and Chiswick) Regulations, 1960. (S.I. 1960 No. 2456.) 5d.

North East Lincolnshire Water Order, 1960. (S.I. 1960 No. 2449.) 8d.

Stopping up of Highways Orders, 1960:—

City and County Borough of Bath (No. 5). (S.I. 1960 No. 2476.) 5d.

County of Bedford (No. 10). (S.I. 1960 No. 2468.) 5d.

County Borough of Bolton (No. 1). (S.I. 1960 No. 2465.) 5d.

County of Chester (No. 12). (S.I. 1960 No. 2475.) 5d.

County of Chester (No. 19). (S.I. 1960 No. 2479.) 5d.

County Borough of Croydon (No. 2). (S.I. 1960 No. 2471.) 5d.

County of Derby (No. 19). (S.I. 1960 No. 2466.) 5d.

County of Essex (No. 22). (S.I. 1960 No. 2467.) 5d.

County of Kent (No. 19). (S.I. 1960 No. 2472.) 5d.

County of Leicester (No. 2) Order, 1960 (Variation). (S.I. 1960 No. 2474.) 4d.

London (No. 71). (S.I. 1960 No. 2453.) 5d.

County of Oxford (No. 4). (S.I. 1960 No. 2463.) 5d.

County of Sussex, East (No. 7). (S.I. 1960 No. 2473.) 5d.

County of Wilts (No. 16). (S.I. 1960 No. 2464.) 5d.

Sunderland and South Shields Water Order, 1960. (S.I. 1960 No. 2460.) 6d.

Wages Regulation (Aerated Waters) (England and Wales) Order, 1961. (S.I. 1961 No. 6.) 8d.

Wages Regulation (Dressmaking and Women's Light Clothing) (England and Wales) Order, 1961. (S.I. 1961 No. 1.) 8d.

Weedon–Atherstone–Brownhills Trunk Road (London–Yorkshire Motorway, Long Dole Bridge Link Road Extension) Order, 1960. (S.I. 1960 No. 2469.) 5d.

West Cumberland Water Board Order, 1960. (S.I. 1960 No. 2448.) 1s. 5d.

SELECTED APPOINTED DAYS

January

9th — National Insurance (Increase of Benefit and Miscellaneous Provisions) Regulations, 1960. (S.I. 1960 No. 2422.)
National Insurance (Industrial Injuries) (Increase of Benefit and Miscellaneous Provisions) Regulations, 1960. (S.I. 1960 No. 2430.)
Wages Regulation (Boot and Shoe Repairing) (Amendment) Order, 1960. (S.I. 1960 No. 2287.)

12th — Chancery of Lancaster Rules, 1961. (S.I. 1961 No. 3.)
Chancery of Lancaster (Costs) Rules, 1961. (S.I. 1961 No. 4.)

16th — Tithe (Copies of Instruments of Apportionment) Rules, 1960. (S.I. 1960 No. 2440.)

20th — Wages Regulation (Dressmaking and Women's Light Clothing) (England and Wales) Order, 1961. (S.I. 1961 No. 1.)

23rd — Wages Regulation (Aerated Waters) (England and Wales) Order, 1961. (S.I. 1961 No. 6.)

NOTES AND NEWS

CHANCERY OF LANCASTER RULES

The Chancery of Lancaster Rules, 1961 (S.I. 1961 No. 3), in operation on 12th January, 1961, provide for a new Ord. 48F, dealing with proceedings under the Charities Act, 1960, and revoke r. 12 of Ord. 48.

The Chancery of Lancaster (Costs) Rules, 1961 (S.I. 1961 No. 4), also in operation on 12th January, apply the new scale of costs recently adopted in the Supreme Court (S.I. 1959 No. 1958 (L. 13)) to the Palatine Court so far as appropriate. All existing rules relating to the scales of costs are revoked and replaced by the new scale set out in the schedule to the rules. In addition the following changes applied to the Supreme Court by the above S.I. are adapted to the Palatine Court: (1) a provision for review by the Vice-Chancellor of the amount allowed in respect of any item of costs by a taxing officer, even though no question of principle may be involved (r. 3 (*b*)); (2) the elimination of all but one of the different bases of taxation as between solicitor and client, the one retained being that where the costs are payable out of a fund in which the client and others are interested (r. 3 (*a*), adding r. 17A (3) and (4) to Ord. 52).

APPLICATIONS FOR SILK

Applicants for silk who wish their names to be considered for the next list of recommendations should send their applications to the Lord Chancellor's Office by Monday, 13th February, 1961. Those who have already made applications should renew them before that date.

Obituary

Mr. WALTER WILLIAM GREEN, M.M., solicitor, of Birmingham, 3, died on 7th January, aged 72. He was admitted in 1910.

The Rt. Hon. LORD TERRINGTON, C.B.E., chairman of the Industrial Court and formerly chairman of the National Arbitration Disputes Tribunal, died on 7th January, aged 73. He was called to the Bar by the Inner Temple in 1911, but was admitted a solicitor in 1923 and practised until 1952.

Societies

The CENTRAL AND SOUTH MIDDLESEX LAW SOCIETY is holding its annual general meeting at the Century Hotel, Forty Lane, Wembley, on Wednesday, 8th February, 1961. It will be preceded by a dinner at 6.45 for 7.15 p.m. (tickets (exclusive of wines) 1 guinea). After the annual general meeting, Mr. J. F. Warren, Under Secretary at The Law Society, will address members on legal education. He will make some references to the new legal education scheme and will give time for questions.

The WEST LONDON LAW SOCIETY will celebrate its first birthday (3rd February) at a wine and cheese party at The Law Society's Hall on Thursday, 2nd February, at 7.30 p.m. Members may bring guests. The annual general meeting will be held at the Dominions Hotel, Lancaster Gate, on Tuesday, 21st February, at 6.30 p.m.

THE SOLICITORS ACT, 1957

On 30th December, 1960, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of CECIL WILLIAM BATESON, formerly of Oast House, Glaziers Forge Farm, Dallington, Heathfield, Sussex, and now of The Caravan, Mere, Wilts, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

PRACTICE NOTE

PROBATE, DIVORCE AND ADMIRALTY DIVISION

LEGAL AID (GENERAL) (AMENDMENT NO. 4) REGULATIONS, 1960

The above regulations affect costs of all work done on or after 1st January, 1961. Where bills relate to work done partly before and partly after that date they must be drawn in separate parts relating to each period, and each part separately summarised. In the case of approved specimen undefended divorce bills, separate printed forms may be used for each part where one form cannot conveniently be divided. The certificate of taxation will set out separately the profit costs, counsel's fees, and other disbursements relating to each period.

The charge for instructions for trial or hearing or for appeal (item 26 or item 27) will be apportioned where necessary between the two parts of the bill.

Where Appendix 2 to the Supreme Court Costs Rules, 1959, provides a composite fee for work some of which may have been done before and some after 1st January, 1961 (e.g., item 1), apportionment between the two parts of the bill would strictly be necessary, but there is some doubt as to splitting individual items in the Appendix; moreover the amounts involved will generally be small. Whereas apportionment is a matter for discretion it is proposed normally to avoid the complications involved save as to items 26 and 27 by adopting the following guide as to the date which will decide the part into which the item will be placed:—

(i) As to writs, pleadings and other matters covered by Part 1 of Appendix 2 the deciding date will be the date of issuing, filing or delivery, as the case may be.

(ii) As to summonses covered by Part 2 of Appendix 2 the deciding date will be the date of issue of the summons.

(iii) As to affidavits the deciding date will be the date of swearing.

B. LONG,
Senior Registrar,
Principal Probate Registry.

11*th January*, 1961.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

Classified Advertisements must be received by first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

Classified Advertisements

continued from p. xx

APPOINTMENTS VACANT—*continued*

LARGE City Solicitors require Litigation Manager, admitted or unadmitted, experienced in commercial and company litigation. Salary by arrangement.—Write Box No. 152, Dorland Advertising Limited, 28 Haymarket, London, S.W.1.

BRIGHTON Solicitor with mainly conveyancing practice requires in near future young solicitor.—Box 7335, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST END Solicitors require Outdoor Clerk capable of attending simple Summonses, Completions, etc.; Salary £650 p.a.—Box 7336, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BRIGHTON solicitors require solicitor or unadmitted clerk with some experience for busy litigation department. Permanent and pensionable position for suitable applicant. —Apply Box 7337, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LONDON.—An Assistant Solicitor age under 35 required in the Legal Department of a progressive Life Office, to deal mainly with conveyancing and company matters. Commencing salary up to £1,500 dependent on age and experience. Widow's Pension and Non-contributory Retirement Pension Schemes in operation. Excellent early prospects for the right applicant.—Box 7338, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LITIGATION Managing Clerk (admitted or unadmitted) required by established West End firm to relieve pressure on fast expanding department. Excellent opportunity for capable and ambitious man with sufficient experience to cope with intricate and heavy litigation. Write in confidence with full details as commencing salary required.—Box 7339, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NEWLY admitted Solicitor required in old-established country practice in country market Town on Welsh Borders for about six months. Good salary and experience.—Box 7340, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING and Probate Assistant (admitted or unadmitted) required. Please state experience. Salary up to £1,200 per annum for the right person.—Charles & Co., 54A Woodgrange Road, Forest Gate, London, E.7. MARyland 6167.

EXPERIENCED Conveyancing and Probate Assistant (admitted or unadmitted) required for established practice. Good prospects. Salary £1,000 approx. or according to experience.—David Stephenson, 22 High Street, Brierley Hill, near Stourbridge, Worcestershire.

MID SUSSEX Solicitors require able Assistant Solicitor with all round general experience and initiative. Four-figure salary and excellent opportunity for right man.—Write full particulars, Box 7345, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST Midlands Cathedral City.—Assistant Solicitor required by firm with expanding practice. Attractive Salary and prospects. Some advocacy but a variety of work for a young Solicitor looking for experience and advancement.—Box 7342, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PETTS WOOD, Kent.—Lincoln's Inn Solicitors, old-established practice with branch offices at Orpington and Petts Wood, require Solicitor aged about 30 to manage Petts Wood Office; mostly conveyancing and probate. Salary about £1,200. Good partnership prospects without premium.—Write Box 7343, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST END Solicitors require expert unadmitted Conveyancer able to deal with a considerable volume of responsible work. Salary commensurate with ability and experience in the range of £1,250 to £1,500 per annum. Luncheon Vouchers and Pension Scheme.—Box 7344, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors require experienced trust clerk with knowledge of tax and estate duty. Salary up to £1,100 p.a.—Apply Box 7341, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CARDIFF.—Cardiff solicitors with substantial practice require able unadmitted Conveyance Clerk under 35; some Probate; Housing assistance if required; commencing salary up to £1,500 per annum according to age and experience.—Box 7346, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NORTHUMBERLAND.—Assistant solicitor or unadmitted managing clerk required in old-established Alnwick firm. Mainly probate and conveyancing. Good salary with prospects for right person.—Box 7347, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BERKSHIRE.—Newly qualified solicitor required as assistant in small general practice in busy market town.—Box 7348, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

TEDDINGTON, Middlesex.—Solicitors require Cashier/Bookkeeper, if able to assist with outdoor work an advantage. Please write stating age, experience and salary required.—Box 7287, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BERKSHIRE.—Required for small country practice, male clerk with five or six years' general experience. Assistance with housing if required.—Box 7353, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING ASSISTANT.—Conveyancing Partner of large Manchester firm requires unadmitted permanent assistant, preferably aged 25/35, with basic experience to work with some supervision, knowledge of registered land procedure desirable but not essential. Salary not less than £850 p.a. initially, capable of increase according to ability. Staff pension scheme in operation. Genuine interest in conveyancing the most important consideration. Practical common sense and cheerful disposition also important. The advertiser hopes that he, too, possesses these qualities.—Full particulars to Box 7354, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOUTHEND-ON-SEA.—Assistant Solicitor required for expanding practice mainly conveyancing and probate. Opportunity for energetic young man. Prospects of partnership, salary by arrangment.—Write stating age and experience to Box 7116, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Cashier (woman) required by large firm of Solicitors in the City of London; sound knowledge of Book-keeping and Accounts essential. Salary £14 per week plus L.V.'s and pension scheme. Hours 9.30 to 5.30, Monday to Friday.—Write in own handwriting to Box 7355, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

DERBY.—Young Assistant Solicitor required. Commencing salary £1,000 per annum or more according to experience with periodical increments according to ability. A good house can be provided if necessary.—Apply to Alfred E. H. Sevier, 8–9 St. Mary's Gate, Derby.

THE UNIT CONSTRUCTION COMPANY LIMITED

Civil Engineers and Building Contractors invite applications for the position of

ASSISTANT SOLICITOR

in the newly-formed Legal Department at their Head Office at Feltham, Middlesex. Applicants should have Conveyancing experience and knowledge of Contract and Company work would be an advantage. Progressive salary commencing at £1,250 p.a. Contributory Pension Scheme and non-contributory Life Insurance. Bonus Scheme. This is an excellent opening for a young Solicitor wishing to make a career in the Building Industry. Applications giving full details to:

THE COMPANY SOLICITOR,
THE UNIT CONSTRUCTION CO., LTD.,
CENTRAL WAY,
FAGGS ROAD,
FELTHAM,
MIDDLESEX

CONVEYANCING or Managing Clerk (unadmitted) required by Eltham (London/Kent Border) Solicitors. Responsible and progressive post. Good salary according to age and experience. Would suit gentleman with experience in firm of standing. No age limit. Assistance with removal arrangements.—Box 7356, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

COST Clerk required by West End firm; general practice; good salary and prospects.—Box 7357, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST END firm require experienced cashier/bookkeeper. Full charge; staff twenty-two; progressive post.—Write Box 7358, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SIDCUP, Kent (close by station).—Shorthand typist with upwards of six years' conveyancing experience required. Salary according to experience.—Ring Footscray 8285.

£1,000 per annum upwards commencing salary to Assistant Solicitor Holborn area, capable of working with minimum supervision with sound experience general practice, young hardworking, ambitious with liking for responsibility. Ability rewarded. Telephone CHA 7033.

ACCOUNTANT/Bookkeeper required for Wimbledon Solicitors—good salary dependent on qualifications and experience and not less than £12 0s. 0d. per week.—Box 7303, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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★ Classified Advertisements ★

continued from p. xxi

APPOINTMENTS VACANT—*continued*

EXPERIENCED Probate Manager (30-45) required by Solicitors in Southern England. Wide and extensive knowledge of Trust administration and accounts with ability to work on own responsibility essential. Good progressive salary £1,000–£1,250 or commensurate with age and experience; Pension and Life Insurance Schemes; Assistance with housing and moving expenses: own Room and Secretary.—Write with full details to Box 7291, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ISLE OF WIGHT Recently qualified Solicitor (Man or Woman) required to assist with Probate and Conveyancing. Pleasant district and good opportunity to widen experience.—Box 7302, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

READING.—Admitted Clerk required with experience of General Practice and to assume responsibility for litigation and advocacy with prospects of a partnership. Please write with full particulars and salary required.—Box 7282, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

COMPANY Managing Clerk, admitted or unadmitted, required by City firm. Pension scheme, L.V's, good prospects.—Box 7314, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

THE UNIT CONSTRUCTION COMPANY LIMITED

Civil Engineers and Building Contractors invite applications for the position of

CONVEYANCING MANAGING CLERK

in the newly-formed Legal Department at their Head Office at Feltham, Middlesex. Progressive salary commencing at £1,200 p.a. Contributory Pension Scheme and non-contributory Life Insurance. Bonus Scheme. Applications giving full details to:

THE COMPANY SOLICITOR,
THE UNIT CONSTRUCTION CO., LTD.,
CENTRAL WAY,
FAGGS ROAD,
FELTHAM,
MIDDLESEX

ASSISTANT Solicitor required for partner in City firm for company and commercial work. Excellent prospects for young man of ability with some experience.—Box 7315, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ESSEX-SUFFOLK Border.—Young assistant solicitor or experienced (unadmitted) clerk required in old-established busy general practice (with public appointments) in East Anglian market town (London 58 miles); mainly probate and conveyancing; good salary and prospects.—Box 7318, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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